
Arkansas Court Improvement Interstate Placement of Foster Children Assessment Report

**Arkansas Supreme Court Ad Hoc Committee
On Foster Care and Adoption**

June 2008

Arkansas Supreme Court Ad Hoc Committee on Foster Care and Adoption

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INTRODUCTION

Acknowledgements

We wish to thank our Chief Justice of the Arkansas Supreme Court, Jim Hannah, for his leadership and commitment to best practices in child welfare issues in our courts. To all our judges, attorneys, workers, and volunteer advocates who work tirelessly on these difficult cases and continue to fight for reforms in our system to better ensure the safety, health, and well-being of the children in our courts, we offer you our deepest appreciation and gratitude.

Thanks to the members of the Supreme Court Ad Hoc Committee on Foster Care and Adoption for their time, expertise, continued guidance, and dedication to improving the lives of children in our court system. Thank you to our partner, DCFS, who provided us full access to their ICPC data base and Judge Mark Hewett and Judge Jay Finch who provided us access to court files and allowed us to view court proceedings.

Teri Hays, for her intellect, expertise, guidance, and statistical analysis. This assessment would not have been possible without her and for that we are most grateful. Not only did she review and analyze all the data in this report, she is the author of those key sections. Our staff and the Supreme Court Ad Hoc Committee are very grateful that she took the lead on this important project.

History

The Arkansas Judiciary and DCFS have partnered together for over a decade working to try to improve the Interstate Compact on the Placement of Children (ICPC). The

Arkansas Supreme Court found that ICPC was intended to govern the placement of children in substitute arrangements for parental care, such as foster care or adoption. ICPC does not apply when a child is returned by the sending state to a natural parent residing in another state. *Arkansas Dep't of Human Servs. v. Huff*, 347 Ark. 553, 655 S.W.3d 880 (2002).

After the *Huff* decision, DCFS had difficulty placing children with parents or relatives out-of-state because our state law dictated that ICPC did not apply and other states required such compliance. Arkansas DCFS attempted to enter border agreements to assist with the interstate placement of children to parents and relatives, but states refused to enter border agreements with Arkansas because the agreements contained accountability provisions not found in the current ICPC law.

The Arkansas Senate Judiciary Committee heard testimony on the issues concerning needless delays of children being placed with relatives out-of-state, lack of due process, and accountability. In the end, Act 1309 of 2003, section 15 amended Ark. Code Ann. §9-29-201 regarding the Interstate Compact on Placement of Children (ICPC). The definition of placement was amended to include parents, relatives and guardians into the ICPC. Regulation 7 concerning priority placements was also added to expedite placements in limited cases.

Act 1390 also added a provision for judicial review to Article III on Conditions of Placement. If the home study is denied, the sending state shall present the study to the judge who shall review the study and make specific findings of fact regarding the concerns outlined in the home study. If the court finds that the health and safety concerns cannot be addressed or cured by services, the court will not make the placement. The intent was that if the court found that the health and safety of a child could be protected the court, not the state agency, could make the placement.

Members of the Arkansas Senate Judiciary committee requested that DCFS and the judiciary continue their work to improve ICPC, including working with the congressional delegation for national reform. Representatives from the judiciary and DCFS have met

with Arkansas congressional leaders and have shared their mutual concerns with members of the Childrens Bureau, APHSA, NCJFCJ, ABA, NCCA, and NCASA.

The Arkansas Judicial Council, comprised of all circuit and appellate judges, passed a resolution requesting amendments to The Safe and Timely Interstate Placement of Foster Children Act of 2006. Appendix A. Judges have met with congressional leaders and other stakeholders urging reform of the ICPC to include due process, judicial oversight, accountability, and timely and safe placements for children.

Arkansas judges, attorneys, DFCS staff, and advocates continue to argue that the ICPC must be reformed to ensure that children, parents, custodians, foster parents, caregivers, and agency staff who work diligently to place children across state lines are treated with the same due process rights and accountability as when these children are placed within our borders.



Arkansas' Assessment and Methodology

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (Act) amended two new Title IV-E state plan requirements. It required states to have an orderly and timely procedure for the interstate placement of children. It also required states to complete and report on foster and adoptive home studies within 60 days. A fifteen day extension may be added due to circumstances beyond a state's control, e.g. FBI background checks. The state requesting the home study must accept the study within 14 days of receipt, unless it is contrary to the child's welfare. Financial incentives of up to \$1,500 for home studies completed within 30 days of the request were included; however, funding was not appropriated to that end.

The Act made requirements for states to consider out-of-state placements as part of concurrent and permanency planning decisions. Permanency planning hearings should include out-of-state placements as permanency options. If a child is in an out-of-state placement the court should determine that such placement is in the child's best interest.

The Act also required courts that receive Court Improvement Program (CIP) grant funds to assess:

- the effectiveness in expediting interstate placements;
- how courts in different states cooperate to share information;
- the methods available for obtaining information and testimony from agencies and parties in other states without requiring interstate travel; and
- procedures to permit parents, children, attorneys and others to participate in cases without requiring interstate travel

The Arkansas Supreme Court Ad Hoc Committee formed a subcommittee to oversee the ICPC Assessment. This committee determined to focus the assessment on a review of all relevant law and policy, actual ICPC data on all cases in 2007, sample surveys which were distributed at a Spring Conference, and case file reviews.

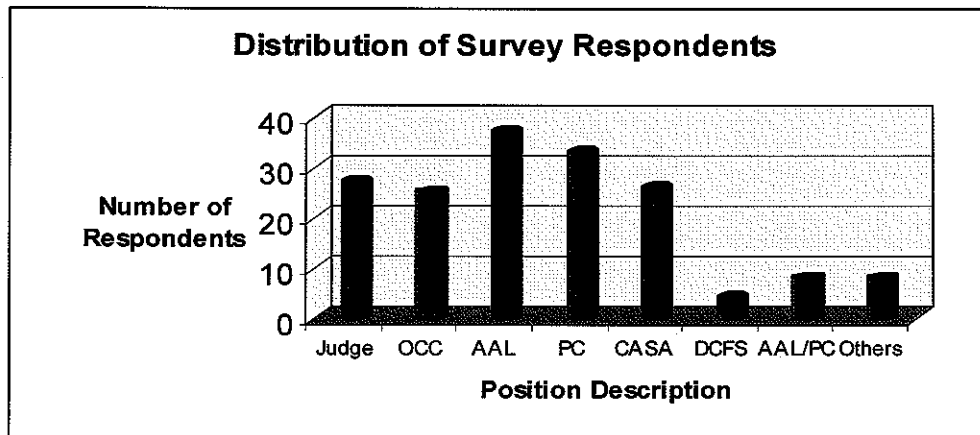
Statistical Data: DCFS maintains a database for ICPC case data which includes a reporting of all ICPC cases in the state of Arkansas. State Fiscal Year Ending 2007¹ (SFY2007) was used as the period of state data analysis. During that year, a total of 4,174 children entered foster care and a total of 7,194 children were in foster care for all or part of the year. Six hundred and one foster care ICPC cases and 91 adoption ICPC cases were opened in FY 2007, for a total of 692 ICPC cases. Each ICPC case included all siblings for whom out-of-state placement has been sought. Seventy of the ICPC cases were Regulation 7 priority request cases, 57 of which were requests send by Arkansas to other states.

¹ SFY 2007 extended from July 1, 2006 through June 30, 2007.

Survey Analysis: Data were also gathered by survey from participants at the annual Arkansas Children in the Courts Conference facilitated by the Arkansas Supreme Court, Administrative Office of the Courts (AOC) and also through a separate survey distributed to state court juvenile judges. Conference participants included judges, agency attorneys (Office of Chief Counsel – OCC), attorneys ad litem (AAL), parent counsel (PC), CASA staff and volunteers, caseworkers with the Division of Children and Family Services (DCFS), and others such as juvenile officers and public defenders. Because only five DCFS caseworkers completed the survey, they have often not been discussed as a separate position class during the analysis.

In an effort to make the survey results more manageable for analytical purposes, the survey instrument listed the most probable responses for several questions and respondents were asked to either rate them in order of their level of frequency or to check multiple responses. Respondents were also given the opportunity to write in comments to supplement any answers to the questions or to make general comments. Notable or frequent comments are included in the various subject sections below.

Not all respondents completed every question. Where answers were missing, percentages were calculated to reflect the actual number of answers received. In ICPC cases where Arkansas is the receiving state, the bulk of respondents have no involvement in the home study process; therefore, most of the survey responses are deemed to be from the perspective of Arkansas as the state sending home study requests to other states. Surveys were completed by 168 respondents which included the following distribution:



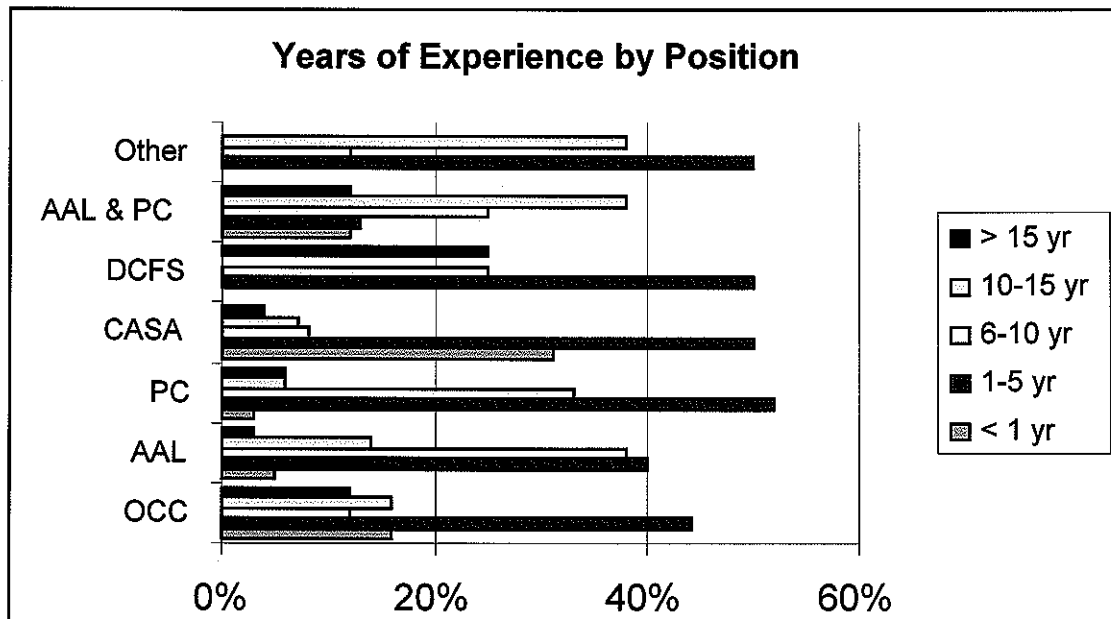
Judicial respondents were evenly distributed throughout the state. The other respondents who reported working in a particular region of the state are distributed as follows:

	Region of Arkansas					Total
	Northwest	Northeast	Central	Southwest	Southeast	
OCC	5	5	11	2	2	25
AAL	9	5	12	8	2	36
PC	12	6	6	4	4	32
CASA	2	12	10	0	0	24
DCFS	0	1	2	1	0	4
AAL & PC ²	4	0	2	0	0	6
Other	2	1	3	0	1	7
Total	34	30	46	15	9	134

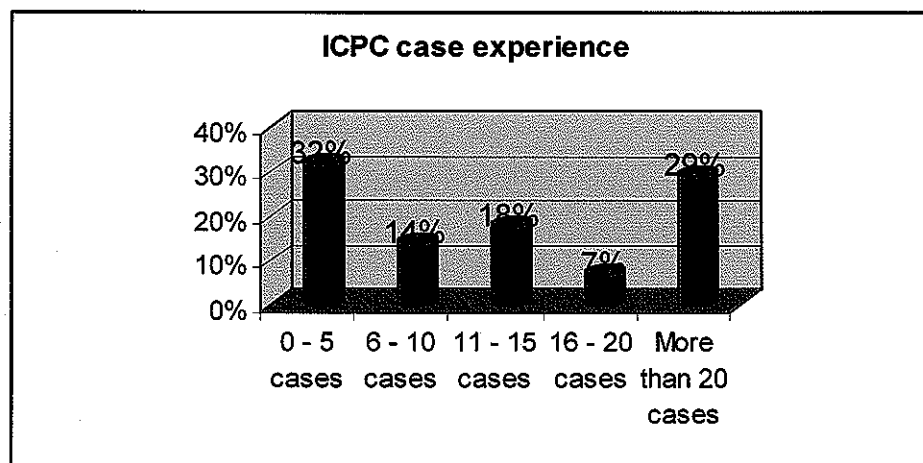
Greater than half of the respondents who held positions other than a judgeship reported having 1 – 10 years of experience in his/her child welfare position. Parent counsel respondents reported the greatest average years of experience at 7.14 years, followed by AALs with 6.16 years, OCC with 5.94 years, and CASA with 3.56 years.³

² Attorneys who are both AAL and PC are separately designated as such.

³ This is a very broad estimate as the survey instrument asked the respondent to indicate a bracket, as noted in the graph, so the median number was used. Also, the final bracket was "15 or more years" and for analysis, 15 years was used.



Non-judicial respondents reported the number of ICPC cases in which they had been involved through their positions in child welfare. Forty-six percent (46%) have worked with 10 or less cases; 25% have worked with 11 to 20 cases; and 29% have worked with more than 20 cases.



Despite the levels of experience noted in the sections above, respondents generally expressed limited knowledge of ICPC law and regulations. Seventy percent (70%) advised that they were “not very knowledgeable” or “somewhat knowledgeable” of ICPC

law and regulations. Only 30% felt they were “knowledgeable” or “very knowledgeable.”

Case File Reviews: Sebastian County had the state’s highest number of ICPC home study requests sent to other states during SFY 2007. Accordingly, it was chosen as the county in which to conduct court file reviews for the ICPC assessment. At the time of review, 26 cases were identified as open ICPC cases and 21 of those files were reviewed. A file review instrument was developed and used for uniformity of the review. The cases reviewed included 49 siblings. ICPC home studies were being sought for a total of 45 children. File reviews were followed-up by a meeting with stakeholders including OCC attorneys, parent counsel, AALs, and the judge.

Findings and Recommendations: Although the assessment did not require findings or recommendations, the subcommittee determined this to be an essential part of any assessment and will follow this report with its findings and recommendations based on the assessment.

Legal Analysis

Arkansas Juvenile Code, A.C.A. §9-27-301 et. seq. Dependency - Neglect Proceedings:

Children in Arkansas who are neglected, abused, or abandoned are called "dependent-neglected." When courts remove dependent-neglected children from the custody of their parents, custody may be placed with the Division of Children and Family Services (DCFS) of the Department of Human Services (DHS), another licensed agency, a relative, or another individual. When a child is placed in the custody of the DHS, he or she is usually placed in a foster home.

Approximately 98% of all dependency-neglect cases in Arkansas begin with an emergency removal. Other cases begin with a civil petition. Within 72 hours of an emergency removal of a child, the agency must file a petition seeking ex parte emergency custody of the child. The parent or custodian receives notice and is entitled to counsel, and if indigent, counsel will be appointed by the court. The child is appointed an attorney ad litem in every case. Within five business days after an ex parte emergency order, the court must conduct a probable cause hearing to determine if there was probable cause to protect the child when the child was removed and whether probable cause continues to exist. The court also determines whether the child can remain safely in the home or if the child must remain out of the home.

Within 30 days of the probable cause hearing (with an additional 30 day continuance allowable for good cause shown) an adjudication hearing is conducted at which time the petitioner must prove its case by a preponderance of the evidence. If a child is adjudicated dependent-neglected, a disposition hearing follows. The disposition hearing may be held immediately following or concurrent with the adjudication hearing, but in any event shall be held no more than 14 days following the adjudication. In practice, the disposition hearing is

usually held immediately following the adjudication hearing, and the two would appear to the casual observer to be one hearing.

While a child is in an out-of-home placement, most cases start with the goal of providing services to correct the conditions that caused removal and to reunify the family. However, the court may, upon the request of the agency, attorney ad litem, or the court itself, hold a no-reunification hearing to determine whether or not DHS shall provide services to reunite a child with his/her family.

When a dependent-neglected child is placed out-of-home, review hearings must be conducted every six months, with the first hearing within six months of the date the child was initially removed from the home. During the case, courts review a case plan which sets out a goal for the child and a plan for reaching that goal. The goal may change, for example, from seeking to return the child home to another permanent placement. The court reviews the agency's and parent's compliance with court orders to achieve that goal.

If a child remains out of his/her home for one year, a permanency planning hearing is required to determine a permanent plan for the child. Permanency planning hearings are also required after a juvenile has been in an out-of-home placement for 15 of the previous 22 months and no later than 30 days after the court files a no-reunification services order. At that time, or before, a decision should be made based on the child's best interest to finalize a safe and permanent placement for that child. If it is in the child's best interest that he/she can return home and his/her health and safety can be protected, that is the preferred outcome by law. If that cannot happen, the state or AAL may seek termination of parental rights so that the state may seek an adoptive home for the child. The Juvenile Code sets out statutory grounds for termination of parental rights. Other possible permanent plans in order of preference are guardianship, custody, and another permanent planned living arrangement. Courts are required to have reviews and permanency planning hearings until the child is in a safe and permanent

placement. The goal is permanence for the child, and in Arkansas, the statutory standard is always the best interest of the child. (Appendix B - Dependency-Neglect Proceedings).

Interstate Compact on the Placement of Children (ICPC), Ark. Code Ann. §9-29-201 et. seq.

The ICPC was created in 1960 as an agreement among states to primarily coordinate the movement of children who cross state lines for the purpose of adoption, foster care, and treatment. The original compact contained ten articles. Arkansas adopted the ICPC in 1979 and still has the ten original articles. Arkansas, like many states, has amended the ICPC making it difficult to argue that it remains a compact law among states. Arkansas ICPC includes:

Article I	Purpose and Policy
Article II	Definitions (<i>amendments to placement in 2003 and 2007</i>)
Article III	Conditions for Placements (<i>amendments for judicial review in 2003</i>)
Article IV	Penalty for Illegal Placement
Article V	Retention of Jurisdiction
Article VI	Institutional Care of Delinquent Children
Article VII	Compact Administrator
Article VIII	Limitations
Article IX	Enactment and Withdrawal
Article X	Construction and Severability

Relevant ICPC Case Law

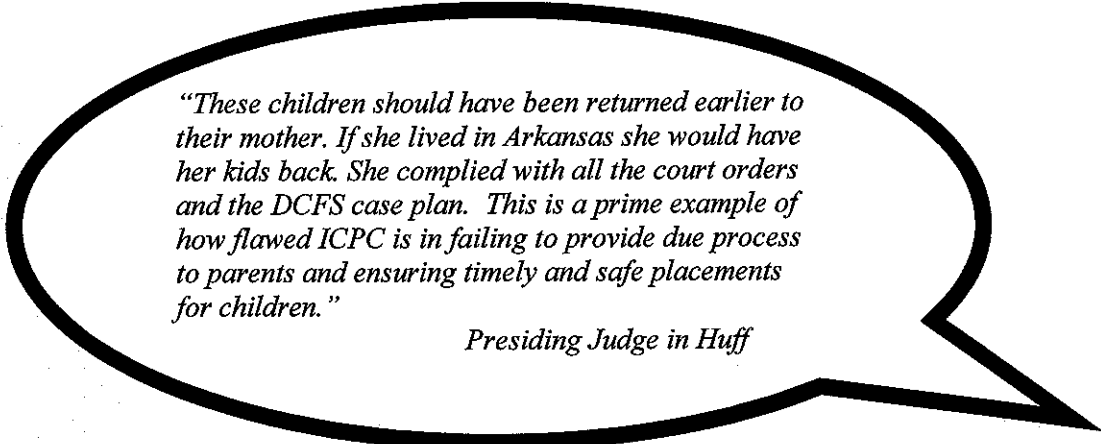
Arkansas has addressed some ICPC issues through case law:

At a probable cause hearing the AAL recommended that the child be returned to the home of the paternal grandparents. OCC objected and requested a home study pursuant to ICPC, but stated when asked by the judge that the only services DCFS would offer the mother would be parenting classes. DHS argued that the court abused its discretion by not complying with ICPC. The Court stated that the Arkansas Supreme Court made it clear in *Huff* that

ICPC is limited to placement of a child in foster care or dispositions preliminary to adoption.

DHS argued that amendments to ICPC post *Huff* to the definition of foster care to include a child parent(s) or relative had remedied *Huff*. The Court stated that the new definition makes it clear that whether a situation is considered foster care depends not upon the relationship of the care giver, but upon the reason for the placement. The circuit court did not place the child in foster care with anyone, it restored custody and ICPC does not apply. ***Arkansas Dep't of Human Servs. v. Jones.***, 97Ark. App. 267, ___ S.W. 3d (2007).

The Arkansas Supreme Court held that the trial court did not abuse its discretion in refusing to admit a Colorado home study into evidence in absence of someone who could be cross-examined as to its contents. In addition, the Court found that ICPC was intended to govern the placement of children in substitute arrangements for parental care, such as foster care or adoption. ICPC does not apply when a child is returned by the sending state to a natural parent residing in another state. ***Arkansas Dept. of Human Servs. v Huff***, 347 Ark. 553, 65 S.W.3d 880 (2002)



"These children should have been returned earlier to their mother. If she lived in Arkansas she would have her kids back. She complied with all the court orders and the DCFS case plan. This is a prime example of how flawed ICPC is in failing to provide due process to parents and ensuring timely and safe placements for children."

Presiding Judge in Huff

The juvenile division of chancery court, having found a child to be dependent or neglected, has the authority to make an award of custody of the child between competing parents. ICPC only deals with children sent from a sending state into a receiving state "for placement in foster care or as a preliminary to a possible adoption." ***Nance v. Arkansas Dept. of Human Servs.***, 316 Ark. 43, 870 S.W.2d 721 (1994)

The ICPC differs from state child welfare legislation in that federal law provides for regulatory authority and accountability with a federal agency. The Association of Compact Administration of the Interstate Compact on the Placement of Children (AAICPC) was established in 1974 and given authority to promulgate rules and regulations. Some states have enacted these regulations into law while others have not.

AAICPC has worked on two major reforms. The first began in 1996 with the NCJFCJ to create a priority regulation, known as Regulation 7, to expedite priority placements. The second began in 2004 with stakeholders, including Arkansas, to rewrite ICPC. Arkansas adopted Regulation 7 and added it to the compact in the definition of placements in 2003. However, Arkansas and a majority of other states have not signed on to the ICPC revisions. Arkansas has held steadfast that the current and proposed ICPC does not adequately provide for due process rights, time lines, or accountability to ensure that children who are placed across state lines are protected with the same degree of oversight that our courts provide for children our state to ensure safety, well being, and permanency.

Placement of Children, Ark. Code Ann. §9-27-355

Once the court grants custody of a child to DHS, DHS is authorized to make placement decisions concerning the child in licensed or approved foster homes, shelters or facilities. Subsection (b) states that for children placed out-of-state, placements should be made pursuant to ICPC.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Ark. Code Ann. §9-19-101 et seq.

Arkansas adopted the UCCJEA in 1999.. The definition of child custody proceedings includes abuse and dependency proceedings. The UCCJEA also provides the following essential statutes for cases across state lines and due process including notice, communication between courts, taking testimony in another state, and cooperation between courts and preservation of records.

§ 9-19-108. Notice to persons outside state

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

§ 9-19-110. Communication between courts

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 9-19-111. Taking testimony in another state

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location

for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

§ 9-19-112. Cooperation between courts; preservation of records

(a) A court of this state may request the appropriate court of another state to:

- (1) hold an evidentiary hearing;
- (2) order a person to produce or give evidence pursuant to procedures of that state;
- (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a) of this section.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

The circuit court shall have jurisdiction to hear proceedings commenced in any part of the state or court of comparable jurisdiction of another state which are transferred pursuant to the UCCJEA Ark. Code Ann. §9-19-101 *et seq.* Ark. Code Ann. §9-27-306(d) (Supp. 2008).

These UCCJEA statutes are examples of mechanisms that can be used in appropriate ICPC cases. In fact, case files revealed that attorneys have used these statutes to compel testimony and records in another state in ICPC cases.

Relevant UCCJEA Case Law

Appellant did not argue with the trial court's initial jurisdiction with the emergency order, but argued that the trial court lacked jurisdiction because it failed to contact the Louisiana court. However, there was no evidence in the record of a custody order or proceeding in Louisiana identified by appellant pursuant to Ark. Code Ann. §9-19-209. There was no certified copy of a Louisiana custody order ever registered in accordance with Ark. Code Ann. §9-19-305. The only evidence was a statement by appellant about a case involving the physical abuse of her daughter five years ago and that the case had been closed.

UCCJEA does not require a trial court who has assumed temporary jurisdiction to return custody to a parent where there is no competing custody order and in such absence Ark. Code Ann. §9-19-204(b) applied and Arkansas became the home state of the children. *Davis v. v. Arkansas Dep't. of Human Servs.*, 98 Ark. App. 275, ___ S.W. 3d ___ (2007).

The Supreme Court held that the probate court had jurisdiction to consider the guardianship petition. It further held that the Florida ex parte order at issue was void *ab initio* and invalid on its face; that even had the Florida order been valid, it was not entitled to full faith and credit because it was never registered in Arkansas as required under the UCCJEA. DHS was without authority to seize the child and relinquish the child to Florida in direct violation of an order of a probate court in Arkansas. *Arkansas Dep't of Human Servs. v. Cox*, 349 Ark. 205, 82 S.W.3d 806 (2002).

Arkansas Supreme Court Rules Supreme Court and Court of Appeals Rule, 6-9

The following orders may be appealed from any dependency-neglect proceeding:

1. adjudication order;
2. disposition, review, and permanency planning hearings if the court directs entry of a final judgment as to one or more of the issues or parties and upon express determination supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R.Civ. P., Rule 54(b);
3. termination of parental rights; and
4. denial of the right to appointed counsel pursuant to Ark. Code Ann. 9-27-316(h). **Supreme Court, Rule 6-9(a).**

Rules of Evidence

The Rules of Evidence are applicable in all dependency-neglect proceedings, except for probable cause hearings. **Ark. Code Ann. §9-27-315(e) and §9-27-325(e) (Supp. 2008).**

Rules of Civil Procedure

The Rules of Civil Procedure shall apply to all dependency-neglect proceedings. **Ark. Code Ann. § 9-27-325(f) (Supp. 2008).**

Administrative Order Number 4

Dependency-neglect proceedings shall be verbatim courts of records and shall keep records in accordance with rules promulgated by the Arkansas Supreme Court. **Ark. Code Ann. § 9-27-325(d) (Supp. 2008).**

Rule Governing Admission to the Bar, Rule XIV. Practice by comity.

A lawyer residing outside the State of Arkansas who has been admitted to practice law in the Supreme Court of the United States or in the United States Court of Appeals for the circuit in which the attorney resides or in the Supreme Court or the highest appellate court of the state of the attorney's residence, and who is in good standing in the court of the attorney's admission, will be permitted by comity and by courtesy to appear, file pleadings and conduct the trial of cases in all courts of the State of Arkansas. However, any trial court may require such nonresident attorney to associate a lawyer residing and admitted to practice in the State of Arkansas upon whom notices may be served and may also require that the Arkansas lawyer associated be responsible to the court in which the case is pending for the progress of the case, insofar as the interest represented by the Arkansas lawyer and the nonresident lawyer is concerned.

Unless the State in which the said nonresident lawyer resides likewise accords similar comity and courtesy to Arkansas lawyers who may desire to appear and

conduct cases in the courts of that State, this privilege will not be extended to such nonresident lawyer.

A nonresident lawyer will not be permitted to engage in any case in an Arkansas court unless a written statement is filed with the court in which the nonresident lawyer submits to all disciplinary procedures applicable to Arkansas lawyers.

DCFS ICPC Policy and Procedure

DCFS' ICPC Policy was updated in February 2008. As the policy states, it is used to move children in need of foster, pre-adoptive, adoption placement or to reunify children with parents across state lines in an orderly and timely manner.

The ICPC policy covers all children in DCFS custody placed out-of-state for:

- Foster care placements;
- Pre-Adoptive placements;
- Adoptive placements; and
- Parent, other relative, or non-agency guardian placements.

In 2007 the agency added to the definition of placements in the ICPC statute to include: If the guardianship is established to preclude a non-relative adoption the guardian shall comply with the compact. (VI-G1)

Procedures for priority placement Regulation 7:

Priority placement applies to the following:

- The child is under two years of age;
- The child is in an emergency shelter; or
- The court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

The receiving state agency has 30 days to complete a request for a priority placement. Requests for placement shall not be expedited or given priority except as outlined below. A request for a priority placement will be implemented as follows:

- The court shall send its order to DCFS within two business days and the order shall include:
 - The child's name, address and phone number;
 - The fax number of the judge and the court, if available.
 - The sending party will send the following to the state Central Office ICPC via overnight mail, or fax, within three business days;
 - The signed court order (The court order must specify how the case qualifies as Regulation No. 7.);
 - A completed form 100A (ICPC Placement Request);
 - Supporting documentation according to policy.
- Within two business days after the receipt of the ICPC priority placement request, the sending state ICPC office will overnight mail the priority request and its supporting documentation to the receiving state ICPC office with a notice that the request for placement is entitled to priority processing.
- The receiving state ICPC Office shall send all the documents to the receiving state's local office within two days. The receiving state's local office has 20 working days to send a determination back to the receiving state's ICPC Office.
- The receiving ICPC office has two days to overnight mail the determination to the sending state's ICPC office. The sending state ICPC office has two days, through overnight mail, to send the determination to the local office.

There are exceptions to the timelines for substantially insufficient information determined by ICPC Compact Administrator. (VI-G15)

Procedure for placing Arkansas children in another state: The family service worker (FSW) prepares an ICPC packet for the ICPC Compact Administrator. The packet shall consist of the following:

- Cover letter or memo to the Arkansas Interstate Compact Office briefly explaining the placement plans and specifically requesting an evaluation of the proposed placement, or home and explain why it is needed; clarification of the legal status and court/Division plans; clarification of any discrepancies in the

request; incomplete or excluded documents; and clarification of any financial planning (foster care payments are to be made, Medicaid coverage, etc.);

- Financial / Medical Plan – ICPC (CFS-592). Specify special needs of the child (medical, educational, etc.) and issues to be addressed;
- Interstate Compact Placement Request (ICPC-100A). (Retain one copy and include five copies with the packet.);
- Court order showing DHS custody of or court jurisdiction over the child and most recent court order;
- Case Plan (CFS-6010);
- Documentation of the child's IV-E eligibility status (DCO-91);
- Complete a thorough Social Summary including background information on the child and family;
- Include the following additional information if applicable:
 - psychological testing reports,
 - counseling reports,
 - school reports / records,
 - medical records / reports,
 - other appropriate reports/documents.

Financial arrangements should be discussed with the prospective placement resource before the study is requested. If a board payment is needed, a foster home study must be requested. **(VI-G5)**

The Arkansas ICPC Office will:

- Review the packet to determine whether or not it is complete and ready to forward to the receiving state's ICPC office.
- Coordinate with the sending party if changes in the packet are needed.
- Send packet to receiving state's compact office.
- Notify sending party of disposition.
- Coordinate the travel plans with the FSW if placement is approved (placement must be made within six months of placement approval)

The FSW/Area ICPC Liaison will:

- Complete and route the “ Interstate Compact Report on Placement Status of Child” (ICPC-100B) to the ICPC office if the out-of-state placement is approved and made.
- Show the date of the placement or of the withdrawal of the request.
- Close the Arkansas Medicaid so that Medicaid services can be pursued in the receiving state.
- Code the “ Application for Emergency Services ” (CFS-6013) to show ICPC service using the child’s name.
- Key the case type in CHRIS as “ ICPC ” for the child placed by the Division in another state.
- Notify the Adoption Services Unit of a proposed adoptive placement, if appropriate.

Communication between states regarding approval of placements, progress reports, case closures and disruptions must go through the ICPC office. (VI-G5)

Procedures for children entering Arkansas for placement:

Services to children should not begin without placement approval (ICPC-100A) from the receiving state’s ICPC office and receipt of placement notification (ICPC-100B) from the sending state’s ICPC office. Requests from sending state should include the same information as described in the Interstate Placement Packet and outlined in Procedure VI-G5. Contact the Arkansas ICPC Administrator if additional information is needed from the sending state to initiate services.

The disposition of request is as follows:

- Requests for home studies of foster parent, relative homes, or adoptive homes received in the Arkansas ICPC office will be forwarded to the appropriate County Office for a reply.
- The Arkansas ICPC Unit will forward the foster home study to the ICPC Field Liaison, Area Manager or DCFS Supervisor.

- The Arkansas ICPC Unit will forward the adoptive home study to the Adoption Field Service Manager, who will forward it to the Adoption Specialist. **(VI-G6)**

After the child is placed and the ICPC 100B received, the DCFS shall:

- Supervise the placement and provide or arrange for necessary services.
- Submit quarterly progress reports to the sending party. More frequent reports may be submitted on request.
- Honor and enforce lawful orders of the court of jurisdiction of the sending state, unless it conflicts with Arkansas policies and/or laws. **(VI-G4)**

The FSW will:

- Provide monthly supervision of the child and send quarterly progress reports to the Arkansas ICPC Unit or as often as requested on the ICPC-100A.
- Notify the Arkansas Administrator ICPC office immediately if problems or changes with placement occur.
- Key the case type in CHRIS as " ICPC " for the child placed in Arkansas from another state. **(VI-G9)**

The receiving state must send quarterly progress reports every three months unless otherwise stated on the ICPC-100A. Mail progress reports to ICPC office for forwarding to the sending state. Enter the progress reports in the child's case record in CHRIS. **(VI-G12)**

Procedures for home studies:

Within 60 days after receiving a request for a home study from another state, the receiving state will, directly or by contract:

- Assess and monitor the placement to ensure compliance with applicable laws and policies of the receiving state, and that the placement is " not contrary to the interests of the child "
- Notify the sending state in writing whether or not the placement is appropriate and in the best interest of the child.

If a home study begun on or before September 30, 2008 is not completed within the 60 day period due to circumstances beyond the state's control (e.g. failure of a Federal agency to provide background check results or failure of an entity to provide completed medical forms that were requested by the State at least 45 days before the end of the 60 day period), the receiving state shall have an additional 15 days beyond the original 60 days to comply with the request. This additional time will be allowed only if the receiving state document the circumstances involved and certifies that completing the home study is in the best interests of the child.

The receiving state is not required to complete those parts of the home study within the designated time period that involve the education and training of the prospective foster or adoptive parents. (VI-G4)

The FSW/Area ICPC Liaison will:

- Complete a Central Registry Check and a thorough home study, including the results of the criminal record check; if available, with signed recommendation regarding placement within 90 calendar days of a request. The DCFS Supervisor must also make a recommendation for or against placement. If the criminal record checks have not been received, a copy of the application/request must be included in the packet and the results sent when received.

Any state agency that administers or supervises the administration of a state program operated under such an approved state plan will not be restricted from contracting with a private agency to conduct home studies. The Adoption Field Services Manager must sign and date the recommendation in an adoption home study.

- Notify the ICPC office if there is to be a delay.
- Include " Request for CPS Central Registry " (CFS-316) and " State Police Criminal Record Check " (CFS-342). The results of the criminal records check shall be provided to the court as soon as they are received.
- No foster child in the custody of another state agency who is placed in Arkansas shall be placed in any home if the criminal record check reveals a felony conviction of an adult in the home for:
 - (1) Child abuse or neglect;

- (2) Spousal abuse;
- (3) A crime against children, including child pornography; or
- (4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

If the criminal record check reveals a felony conviction of any adult in the home for physical assault, battery, or a drug-related offense and the offense was committed within the past five years, the child shall not be placed in the home.

- Send the home study to the Arkansas Administrator, Interstate Compact Unit, not directly to the other state. (VI-G7)

Approved home study packets are valid for six months from the date the ICPC Office signed the ICPC- 100A. The child must be placed within that 6-month period.

The Arkansas ICPC Unit will review the home study to determine if complete and if appropriate to forward to the sending state ICPC office.

If Arkansas receives an approved home study from another state, the ICPC Unit will forward the approved home study and the ICPC 100-A to the ICPC liaison. The ICPC liaison will forward the approved home study and the ICPC 100-A to the assigned caseworker. The assigned caseworker will, with the court's concurrence, make a determination as to whether or not placement will be made. When the determination has been made, an ICPC 100-B will be prepared and forwarded to the ICPC liaison. The liaison will send it to the ICPC Unit who will forward to the appropriate state.

If the home study is denied, the ICPC Unit will process the denied home study request by forwarding a copy of the following to the appropriate ICPC liaison. The ICPC liaison will forward the documents to the appropriate FSW.

The FSW will:

- File the denied home study and ICPC 100A in the appropriate case *file and close the case*, or
- Appeal the receiving state's denial of the home study by:

-
- Preparing a formal request with available supporting documentation to justify why the home study denial should be appealed.
 - Forwarding to the immediate supervisor for approval.
 - If approved, forwarding to the Area Manager for approval.
 - If approved, forwarding to the ICPC unit. The Arkansas ICPC unit will forward a copy of the appeal to the appropriate state's ICPC office for reconsideration of the denied home study.
 - If the appeal is denied, the FSW must wait a minimum of six (6) months before re-initiation of the home study. **(VI-G8)**

Procedures for ICPC termination:

Reasons for terminating an ICPC placement include:

- Adoption is finalized
- Child reaches age of majority
- Child is emancipated
- Child is returned to the sending state
- Custody is returned to the parent or placed with a relative with the approval of both the sending and receiving states
- Transfer of jurisdiction
- Concurrence of the receiving state.

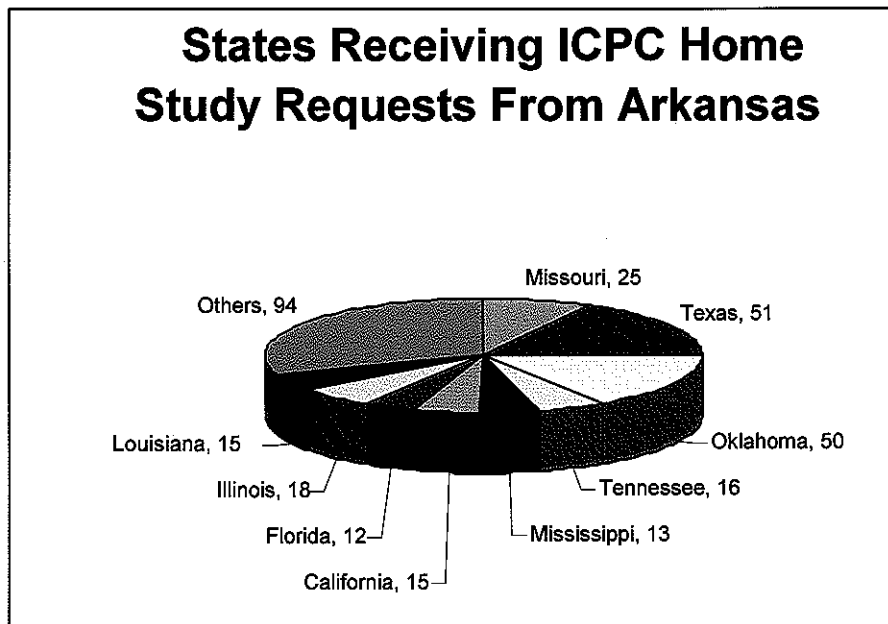
FSW will complete ICPC-100B indicating termination reason and route it to the ICPC office for forwarding to the receiving state. The Arkansas ICPC Unit will forward the ICPC-100B to the sending or receiving state's ICPC office to notify them of the closure case. The sending state is responsible for the original submission of both the ICPC-100A and 100B. **(VI-G14)**

ICPC STATISTICAL DATA, SURVEY ANALYSIS, & CASE FILE REVIEWS

Foster Care and Adoption ICPC Cases in which Arkansas is the sending state:

The ICPC case initiates by a request for an ICPC home study. This may be through a court order or as a part of the case plan developed in the dependency-neglect case. Upon receipt of the request, the local caseworker completes a form ICPC 100A, which is the placement request to the receiving state. This request is accompanied by a packet of materials supporting the home study request.

During SFY 2007, Arkansas sent 309 requests for out-of-state home studies. The states to which requests for home studies were most frequently sent included Texas, Oklahoma, and Missouri which received 126 of the total home study requests. Each of these states border Arkansas.



Arkansas counties sending 51% of the ICPC home study requests during FY2007 are:

	No. home study requests sent
Sebastian County	51
Washington County	31
Pulaski County	29
Miller County	22
Benton County	13
Mississippi County	12

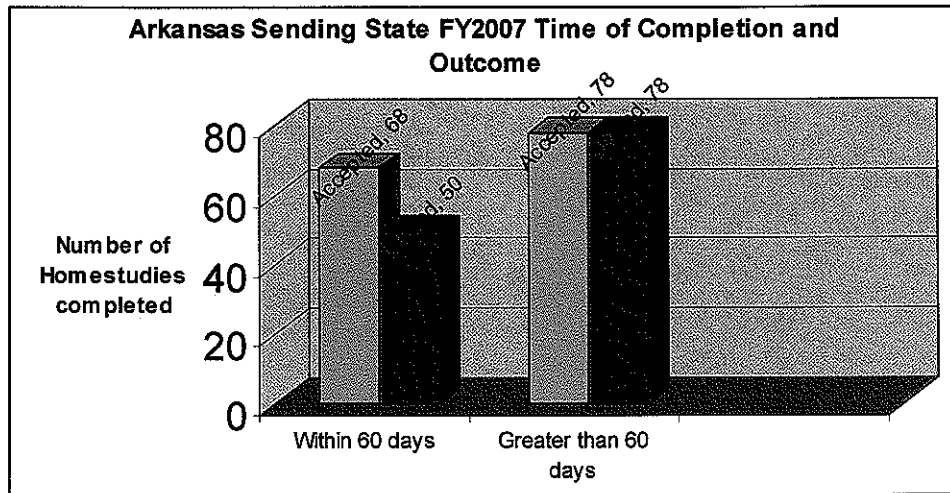
Each county lies on the Arkansas border except for Pulaski County which has the largest county population in Arkansas.

42 U.S.C.A. 671(a)(26) (2006) requires that the receiving state complete the home study and report back to the sending state within 60 days. Arkansas sent 309 requests for ICPC home studies to other states of which 274 were completed.⁴

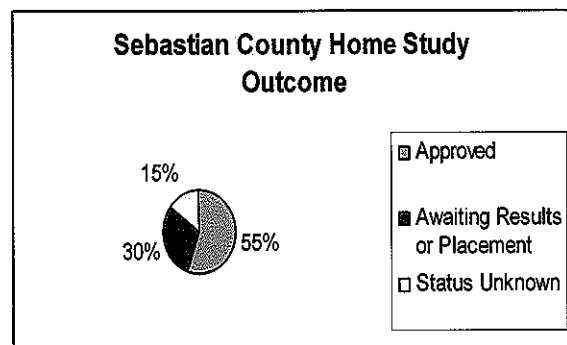
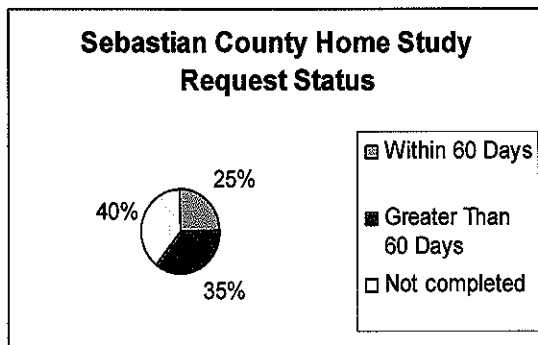
Home studies were completed within 60 days for 118 of the 274 completed cases (43%). Of the timely completed home studies, 68 were approved and 50 were denied by the receiving state.

One hundred and fifty-six (156) home studies (57%) were not completed within 60 days. Of these, 78 (50%) were approved and 78 (50%) were denied. Of the home studies exceeding the time limit, 38 were completed within 75 days while 118 cases took longer. Of those exceeding 75 days, the average time to completion was about 110 days. The greatest time to completion was 448 days.

⁴ Of the remaining 35 cases, 5 were withdrawn, 1 received no response from the prospective custodian, and the database offers no explanation for the non-completion of the remaining 29 cases.



The Sebastian County file review provided data for home study completion time in 20 cases. Twenty-five percent (25%) were completed within 60 days, 35% took more than 60 days to complete, and 40% had not been completed at the time of the review. Of those completed, the average time to completion was 3.7 months.⁵ Of the incomplete home studies, the average time awaiting results at the time of the review was 7.1 months. Fifty-five percent (55%) of the home studies were approved, 30% are awaiting results or placement, and the case files had no information concerning the status of the remaining 15% of the cases.

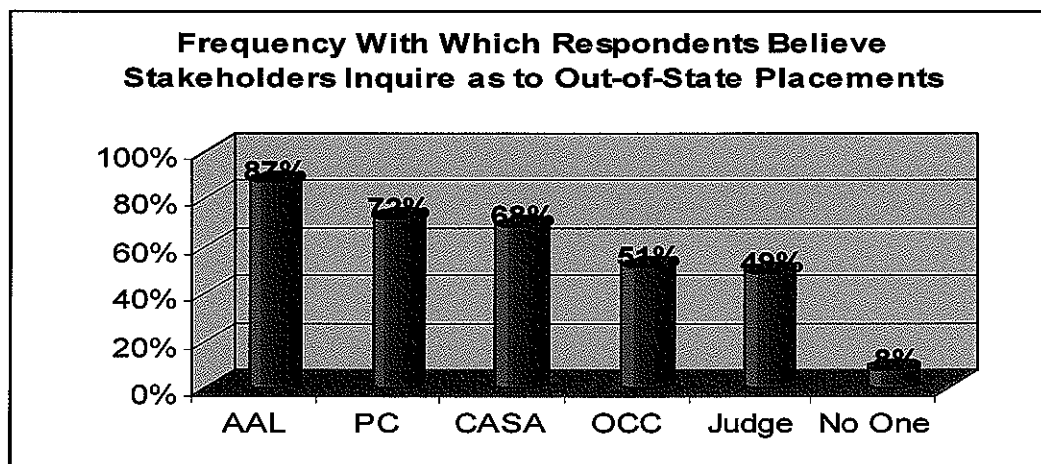


⁵ An extreme value of 35 months on one case was removed so as not to skew the data. The average would be 6.33 months including that case.

Who pursues out of state placements:

When asked whether DCFS pursues foster and adoptive placements with out-of-state relatives and others, 73% of survey respondents said “yes.” Eleven percent (11%) felt that DCFS did not pursue these placements and 16% were not sure.

Respondents were also asked whether they believed that other stakeholders inquire as to out-of state placements for children in their cases. AALs were perceived to have inquired more frequently than the other stakeholders with PC and CASA having the next highest frequency.

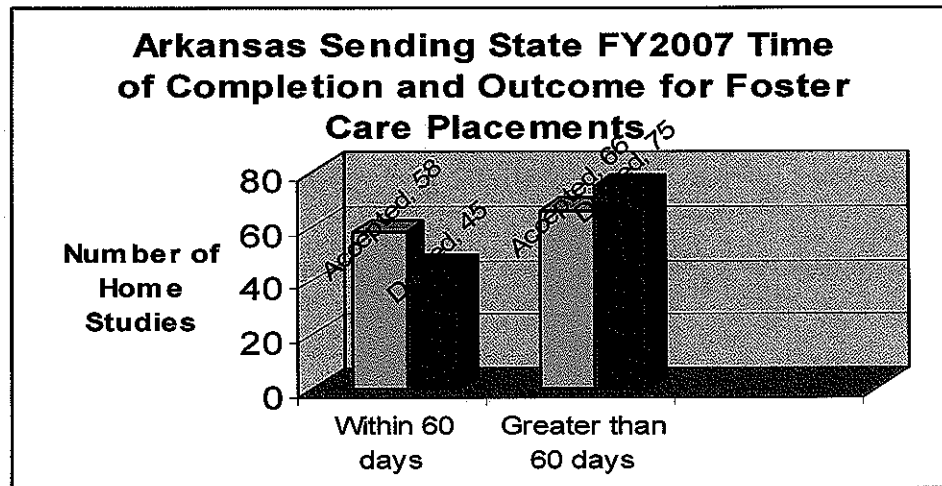


Approval rates: Foster Care v. Adoptive Home studies

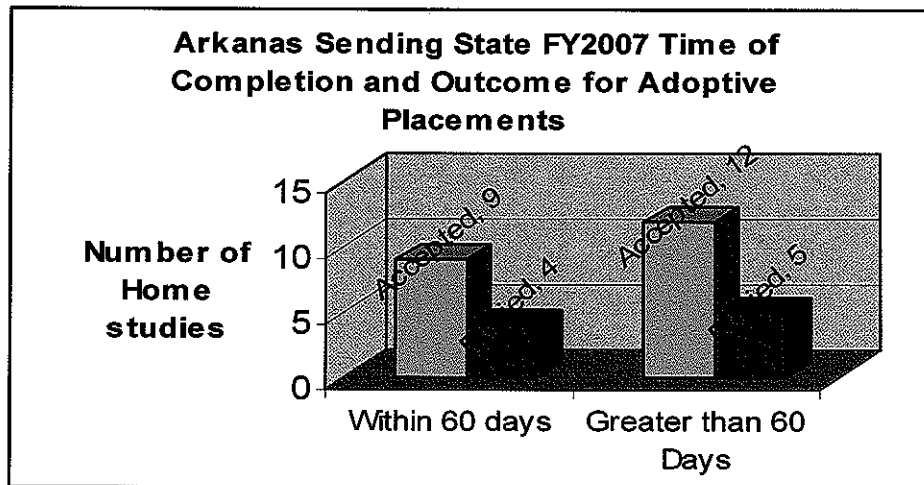
Differences exist in the rates of approval between cases in which a foster placement home study was requested and those in which an adoptive home study was requested when Arkansas was the sending state. As noted below, when the home study was for a foster home placement, 56% were approved while 69% of adoptive home

studies were approved. Foster care placements were sought in 244 cases and adoptive placements were sought in 30 of the completed cases.

When an interstate foster home placement was being sought, 103 home studies (42%) were completed within 60 days while 141 (58%) were not timely. Of the timely home studies, 58 (56%) were approved and 45 (44%) were denied. When the home study was not timely, 66 (47%) were approved and 75 (53%) were denied.

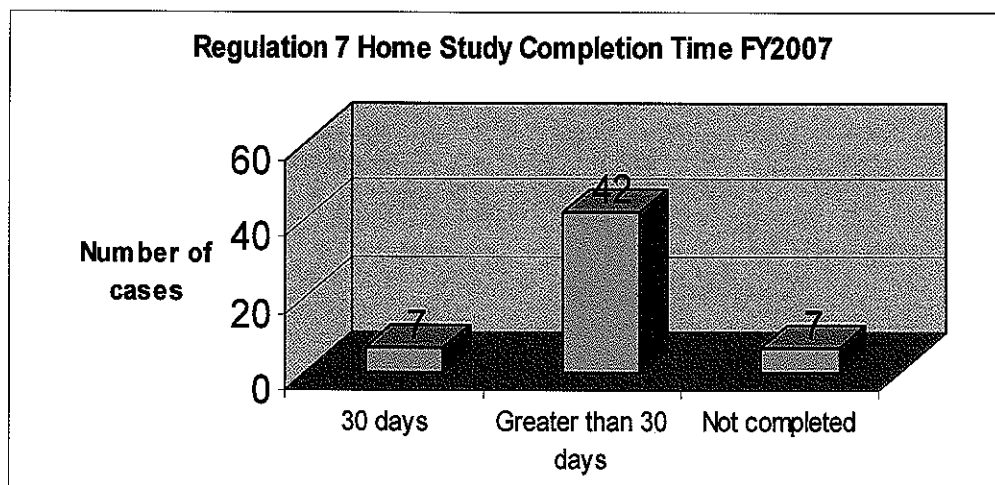


When an adoptive placement was being sought, 13 (43%) of the 30 home studies were completed within 60 days and 17 (57%) were not timely. Of the timely home studies, 9 (69%) were approved and 4 (31%) were denied. When the home study was not timely, 12 (71%) were approved and 5 (29%) were denied.



Regulation 7 priority cases:

Fifty-six requests for home studies sent by Arkansas to other states were Regulation 7 priority request cases. Of those cases, seven (7) cases, or 12.5% were completed within 30 days. Forty-two home studies (75%) were completed after the 30 day time limitation and 7 home studies (12.5%) were not completed at all.⁶



⁶ The dates Arkansas sent the home study requests for these cases range from 7/12/06 to 6/5/07.

When the home studies were completed timely, five cases were approved by the receiving state and two were denied. Of the 42 home studies taking longer than 30 days, 25 were approved and 17 were denied.

The court case file review noted seven Regulation 7 priority requests. Nine cases indicated that Regulation 7 status was not being sought and six case files had insufficient information to determine the priority status.

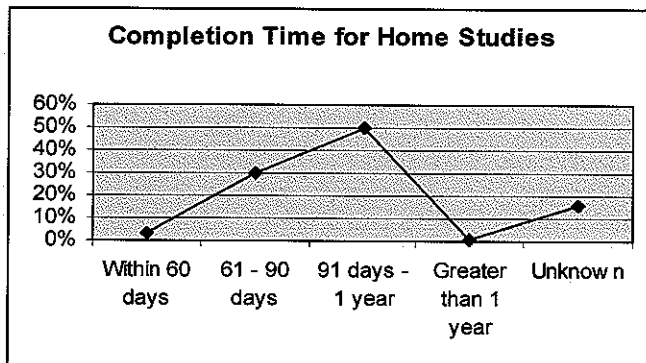
Placements not made within six months:

If placement is not made within six months of the ICPC home study, the home study must be repeated. Placement was not made within six months in two cases in which Arkansas was the sending state.

Office of Chief Counsel staff advised that the reason for a lack of placement within 6 months of a home study may often be that the DCFS is still working toward reunification with the parent and will delay placement if the parent is making progress toward the case plan.

Perceptions of Home Study Timeliness and Outcomes

The average time to complete an ICPC home study was estimated by the majority



of survey respondents to be over 90 days and only 3% of respondents estimated the completion time to be within 60 days. This perception is not consistent with the statistical

analysis of data from the DCFS database which indicates that when Arkansas is the sending state, home studies are completed within 60 days 43% of the time.⁷

The perception of completion performance varied by state regions among the 141 respondents who indicated their regional location. In the northwest region of Arkansas⁸ where over 31% of home study requests to other states originate, 100% of respondents reported that no cases were completed within 60 days. Seventy-one percent (71%) of those responding estimated that home studies take between 91 days to one year to complete. Conversely, as previously noted, the file review in Sebastian County of the Northwest Region which sends more home study requests than any other county, revealed the 25% of home studies were completed within 60 days.

In the central part of the state where Pulaski County has the greatest population, 44% of the 41 respondents estimated home study completion to take 61 – 90 days and 29% thought it takes 91 days to one year. Only three respondents said home studies were completed within 60 days.

Region	Average Amount of Time to Complete ICPC Home Studies					Total
	Within 60 days	61 – 90 days	91 days to 1 year	Greater than 1 year	Unknown	
Northwest	0	5	22	1	3	31
Northeast	0	4	15	0	5	24
Central	3	18	12	0	8	41
Southwest	1	4	4	0	3	12
Southeast	0	3	2	0	1	6
Total	4	34	55	1	20	114

⁷ When Arkansas is the receiving state, home studies are completed within 60 days 30% of the time; however, respondents are generally not involved in those cases until the child enters the state; therefore, they are most likely basing their perceptions on cases in which Arkansas is the sending state.

⁸ Counties with the highest rate of home study requests to other state are Sebastian, Washington, and Benton.

Outcomes of the home study requests sent to other states were also of interest in the survey. DCFS statistical data indicated that when Arkansas was the sending state,

home studies were denied

approximately 47% of the time.⁹

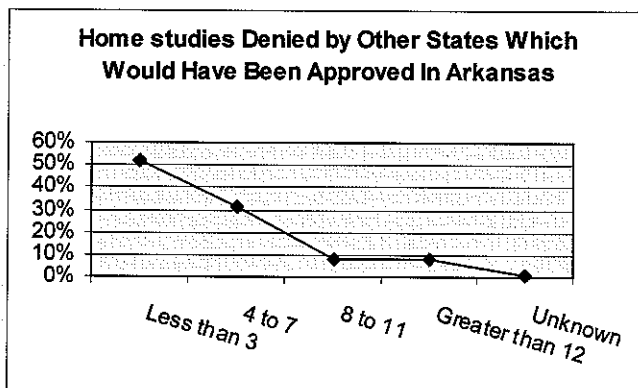
Survey respondents were

asked for the number of cases in

which they had been involved

where they believed that the ICPC

home study, if conducted in



Arkansas, would have been approved.¹⁰ Ninety-one percent (91%) believed they had had less than 12 home studies falling in this category. Given the number of respondents, this translates to a fairly high portion of the cases. Respondents were not asked to limit their answer to SFY 2007 as is used in the statistical data analysis in which 309 home study requests were sent to other states. However, when applying a weighted analysis to the average number of cases reported results in a total of 681 cases in which the respondents believed a home study was denied by another state which would have been approved in Arkansas.¹¹

Respondents were then asked whether they had challenged a denied home study.

Only 19% had challenged a home study believed to have been inappropriately denied by

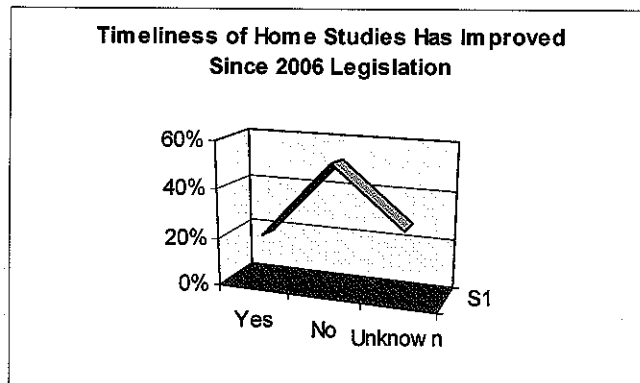
⁹ Weighted average calculated from statistics on page 2 of the statistical data analysis herein. Actual calculation 46.56%

¹⁰ Respondents were not asked to limit their answer to SFY 2007 as is used in the statistical data analysis in which 309 home study requests were sent to other states.

¹¹ This estimate is likely low because the weighted calculation used only 12 cases as the average for the "Greater than 12 cases" category.

the receiving state. Of those making a challenge, 14% reported being successful, 12% reported being unsuccessful, and 74% didn't know the outcome of his/her challenge.

2006 ICPC Legislation



Respondents were asked

whether they believed that the timeliness of home study completion was improved with the implementation of the 2006 ICPC legislation. Fifty-two percent (52%) of the 141 respondents to this

question answered that they believed there was no improvement while just under 20% believed that there was. Another 28% of respondents did not know if there had been an improvement. There was no significant difference between the responses of those in the various legal position¹² categories. Fifty-five percent (55%) of the legal position respondents believed that there had been no improvement; 22% believed that there had; and 23% did not know. Of the CASA respondents, 48% did not know (probably attributable to their lower level of years of experience, (See P. 7), while 12% perceived an improvement and 40% perceived no improvement.

Barriers to timely completion of home studies

Of special interest in this study, is to explore the reasons for or barriers to timely completion of home studies. In an effort to make the survey results more manageable

¹² Includes judges, OCC, AAL and PC attorneys

for analytical purposes, the survey instrument listed the most probable reasons for delay and asked respondents to rate them in order of their level of frequency in causing delays in ICPC cases. The reasons for delay from which the respondents rated their top five were (in order of frequency of responses):

- Delay by receiving state in completing the home study.
- Delay by local CFS (DCFS) staff preparing the ICPC packet.
- Delay caused by Arkansas ICPC central office in sending packet.
- Criminal background checks delayed in receiving state.
- Incomplete packets returned back to local DCFS staff.
- Receiving state rejected the AR packet as incomplete.
- Delay in receiving court order on Regulation 7 home study.

Rating Summary of Respondents – by Number of Responses

	Rated Number One Reason for Delay	Rated In Top Three Reasons for Delay	Rated in Top Five Reasons for Delay
Delay by receiving state in completing the home study	44	89	106
Delay by local CFS (DCFS) staff preparing the ICPC packet	33	83	104
Delay caused by Arkansas ICPC central office in sending packet	25	69	96
Criminal background checks delayed in receiving state	21	64	86
Incomplete packets returned back to local DCFS staff	20	55	92

There was not a significant difference between the responses of the varying positions held by the respondents to the regions of state they have reported as working in. Response breakdown across variables was fairly level.

Case File Example of Barriers

In an ICPC case including four siblings aged 4 to 9, a home study was requested for the maternal grandfather in Kentucky in January 2005. The children were placed with the grandfather in June, 2005 but removed in August, 2005 with Kentucky citing a lack of "paperwork and documentation" from Arkansas. In November, 2005, the court found No Reasonable Efforts and ordered a new home study for the grandfather. The two states again began the ICPC process and still the children were not returned to the grandfather until July 31, 2006.

Communication, Cooperation, and Accountability

Able to Communicate With Child Welfare Staff in Receiving State on Case Issues

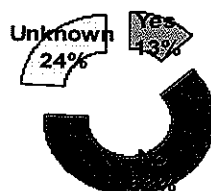


Survey questions were asked to explore the perception of respondents as to the level of cooperation and communication between the states in ICPC cases. Communications with

child welfare staff and stakeholders in other states was explored by asking non-judicial respondents to indicate whether such communication was allowed to them. Sixty-three percent (63%) advised that they could not.

Non-judicial respondents were also asked about their perception of whether state

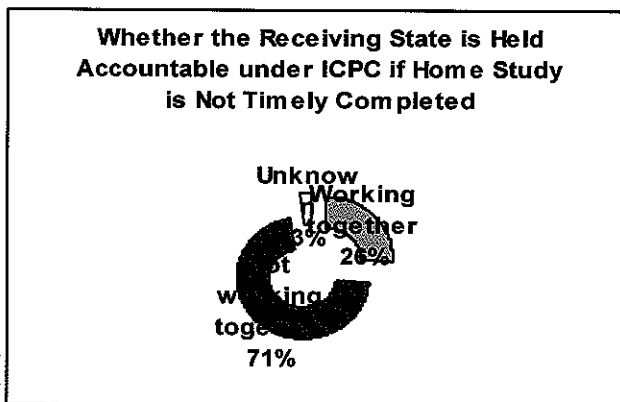
Whether State Agencies are Working Diligently Together in ICPC Cases



agencies are working diligently together to facilitate the timely receipt of ICPC home studies. Sixty percent

(60%) of respondents felt that they were not working together diligently, while only 13% felt that they were.

Further, respondents were asked to state whether they did or did not feel that the receiving state in ICPC cases was held accountable under ICPC if the home study is not timely completed. Seventy-one percent (71%) believe that the receiving state is not held



accountable for late home studies.

Taking the three measurements together, the majority of respondents do not feel that communication, cooperation, and accountability are a part of the ICPC process. Several

respondents commented in response to these questions that the level of these attributes occasionally depends upon the state with which Arkansas shares an ICPC case.

Expedition of Home Studies

Questions were asked on the survey to ascertain whether the respondent took action to expedite home studies once they learn of a delay in the ICPC process. One hundred and twenty (120) non-judicial respondents addressed questions concerning the actions taken, if any, while 22 judges responded to an inquiry about speaking to other judges across state lines.

When respondents were asked whether they have taken action to expedite a home study after learning of a delay, 51 (42%) advised that they had not taken any action at any time. The 69 (58%) who had taken action were asked to indicate the type of action taken.

Respondents selected from a list of probable actions and more than one selection could be made. The following results were noted:

Actions Taken to Expedite ICPC Home Studies

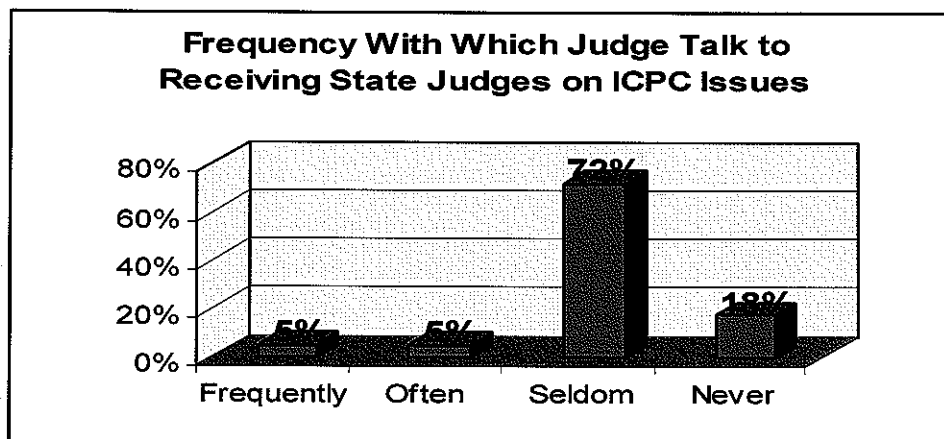
Yes, I tried to contact child welfare agency staff in the receiving state	20
Yes, I tried to contact the judge in the receiving state	4
Yes, a hearing was held to have Arkansas CFS staff report on their action to determine if Arkansas CFS staff were responsible for the delay	35
Yes, I asked CFS to report on their action to determine if Arkansas CFS staff were responsible for the delay	43

A fairly low portion¹³ of survey respondents indicated that they have taken any action to expedite home study completion when delays are evident. Those ratios are:

OCC	68%
AALs	57%
PC	36%
AAL & PC	36%
CASA	19%
Others	75%

Judges who responded to an inquiry as to how often they talk to judges in receiving states on ICPC issues offered the following:

¹³ This includes attorneys who failed to respond to the question.



In a related discussion, attorneys in the stakeholders meeting following the ICPC court file review felt Sebastian County's strengths in ICPC cases included (1) consistency of counsel throughout the course of the case; (2) few hearing continuances; (3) timely hearings; (4) specific orders with timelines; (5) and gradual visitation leading toward placement. Yet, attorneys felt that the ICPC process was flawed and presented a challenge to efficient and effective ICPC placements.

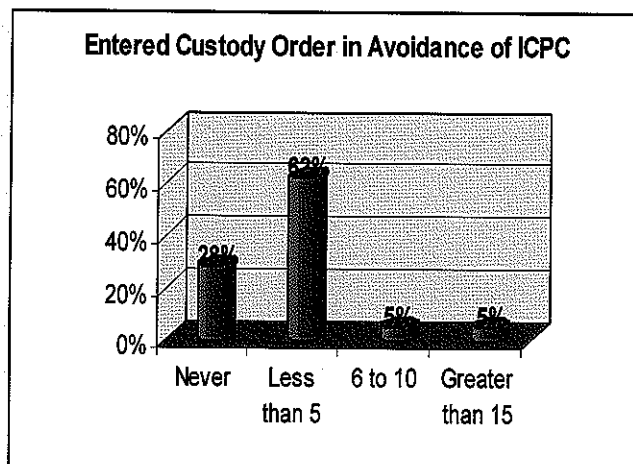
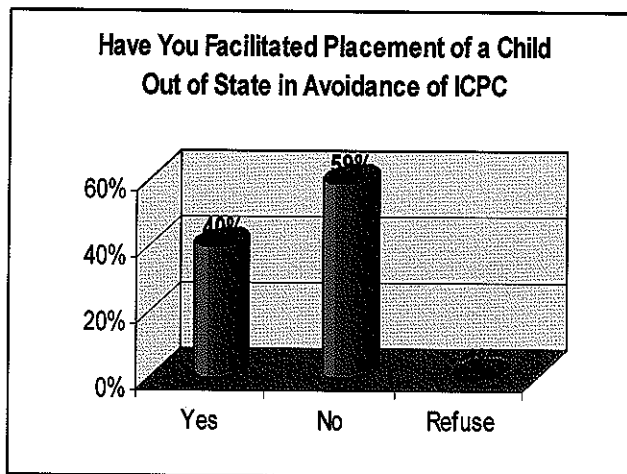
Placement of Children Through ICPC

Case file reviews indicated that Sebastian County children generally were placed within 1.3 months of the home study completion.¹⁴ At the time of review, children who had achieved ICPC placement status had been in their placements for an average of 15.8 months and the ICPC case in Sebastian County remained open. In one case, placement failed when the out-of-state custodian was arrested and the children returned to Arkansas.

¹⁴ In one case, placement took one year and that extreme value was removed to more accurately generalize time-to-placement. Including that case results in a time-to-placement of 2.67 months.

Avoiding ICPC

Aware of the delays and barriers to timely and efficient ICPC processes, the next logical question became whether the stakeholders in Arkansas' courts were taking steps



to avoid the delays of the ICPC process. Separate questions in this vein were asked to judicial and non-judicial respondents. To the non-judicial respondents the question read, *"Have you facilitated the placement of a child out of state and*

knowing about ICPC, took steps to avoid having to comply with ICPC (i.e. Gave custody and terminated court jurisdiction)? A "yes" response was given by 40% of respondents. A similar question was

asked of judges. The question was

posed, *"How often have you entered a custody order for an out-of-state placement and terminated your jurisdiction to avoid ICPC?"* Seventy-two percent (72%) have entered a custody order in this manner and 28% report that they have not.

Written Progress/Status Reports by Receiving State

Non-judicial respondents were asked whether they receive timely reporting from the receiving state when a child has been placed through ICPC. Twenty-three percent (23%) of the 119 respondents advised that they did. Fifty-six percent (56%) said that they did not get timely reports and 19% said they have not been involved with a case where a child was placed in an out-of-state placement.

Judges were asked about the frequency of their receipt of ICPC reports from the receiving state and 55% reported never receiving reports. Fourteen percent (14%) thought they received reports quarterly while 23% thought they received them every six months. One judge reported receiving reports on an annual basis.

File reviews in Sebastian County also revealed few ICPC status reports in the court files. Reports were noted in only four case files (19%) for review hearings and in only 4 case files (19%) for permanency planning hearings.

Testimony or written information provided at hearings

All respondents were asked about whether information concerning a child in an out-of-state placement through ICPC comes to the court through testimony and/or written documentation. Of 120 respondents, 11% said that they had cases in which the receiving state staff appeared in Arkansas to present court testimony on the progress and status of the child. Seventy-four percent (74%) reporting never having a case in which in-person testimony by receiving state staff was taken, and 15% had no cases with an out-of-state placement. Questions were also asked concerning the receipt of information from out-of-state caregivers. Out-of-state caregivers were reported to have offered testimony either in

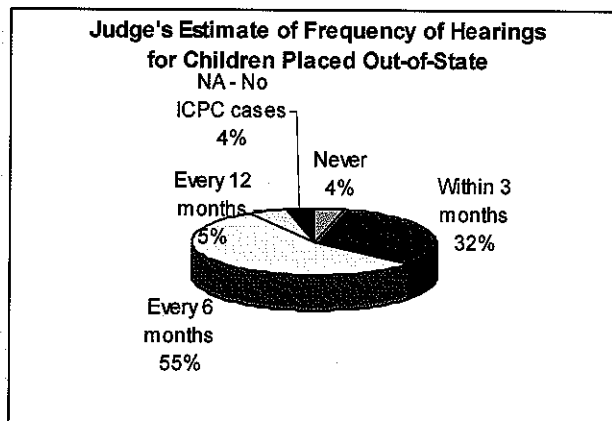
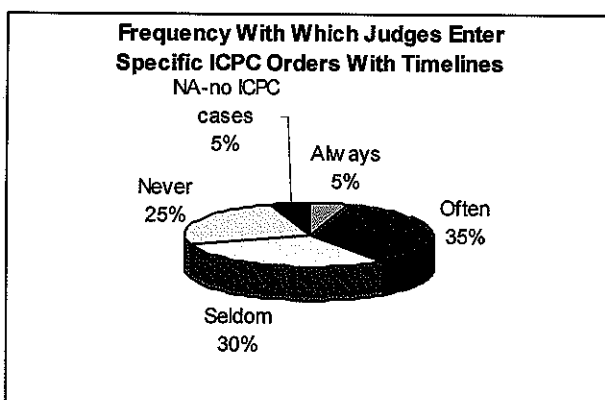
person or by telephone or other electronic means by 51% of respondents. The caregiver was reported to have provided written information about the placement by 45% of respondents. Twenty-two percent (22%) of respondents advised that the out-of-state caregiver did not provide any information concerning the placement.

Percentage of Respondents Reporting Written Reporting, Written Information, and Testimony is Presented at Hearings of ICPC Cases When a Child is in an Out-Of-State ICPC placement

Written Reports (Non-Judicial Respondents)	Written Reports (Judicial Respondents)	Testimony by Receiving State Staff	Testimony by Receiving State Caregiver	Written Information From Receiving State Caregiver
23%	14%	11%	51%	45%

Best Practices:

Judges were asked the frequency with which they make specific orders with



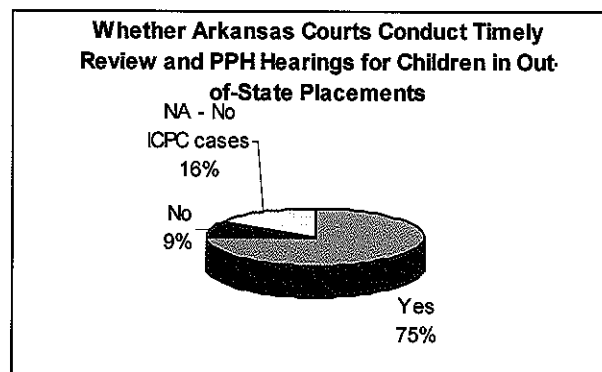
required timelines in ICPC cases.

Only one in 20 answered that he/she always does. Five (5), or 25%, reported that they never entered specific orders with timelines. Sixty-five percent (65%) reported making such orders either "often" or "seldom". One respondent had yet to be involved in an ICPC case.

Both judicial and non-judicial respondents were asked about the

regularity of hearings for children placed outside of Arkansas in ICPC cases. Eighty-six percent (86%) of judicial respondents reported that they hold hearings every 3 to 6 months. Only one respondent reported not holding hearings and one respondent had not yet been involved in an ICPC case.

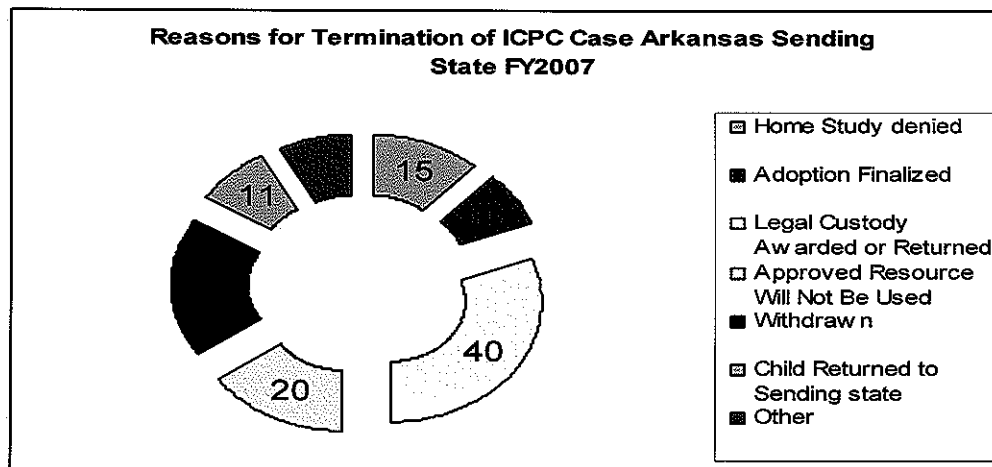
When non-judicial respondents were asked about the frequency of hearings, the question was posed as whether or not the court conducted timely review and PPH hearings for children placed outside of Arkansas. A substantial 75% did feel as though hearings were timely held while 9% felt that they were not. Sixteen percent (16%) of respondents had not been involved in an ICPC case.



The majority of case files reviewed in Sebastian County (62%) contained documentation of timely review hearings. Documentation also indicated that timely PPH hearings were held in 50% of open ICPC cases. Many cases were not yet to the stage of PPH and some had not reached the stage of review hearings. Through follow-up interviews with attorneys, reviewers determined that Sebastian County consistently held timely review and PPH hearings.

ICPC Case Termination

The ICPC case may be terminated for a variety of reasons. These include: Finalization of the adoption; the child reaches majority; the child is emancipated; the child is returned to the sending state; the child is returned to the parent or placed with a relative with approval from both the sending and receiving states; jurisdiction is transferred; or the receiving state concurs in closure of the case. In foster care cases in which Arkansas is the sending state, the following reasons for closure have been recorded for 130 cases opened in 2007.

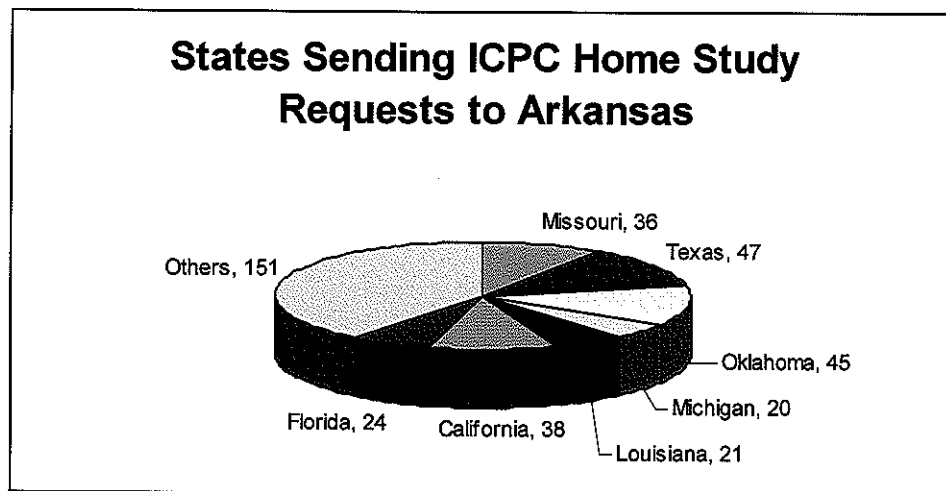


Of 130 cases terminated, the most common reasons for closure were that “legal custody and/or guardianship was awarded and/or custody was returned”, “home study request withdrawn”, and “the approved resource will not be used for placement.”

Foster Care and Adoption ICPC Cases in which Arkansas is the receiving state:

The ICPC case initiates by a request for an ICPC home study. This may be through a court order or as a part of the case plan developed in the dependency-neglect case. Upon receipt of the request, the ICPC unit completes a form ICPC 100A, which is

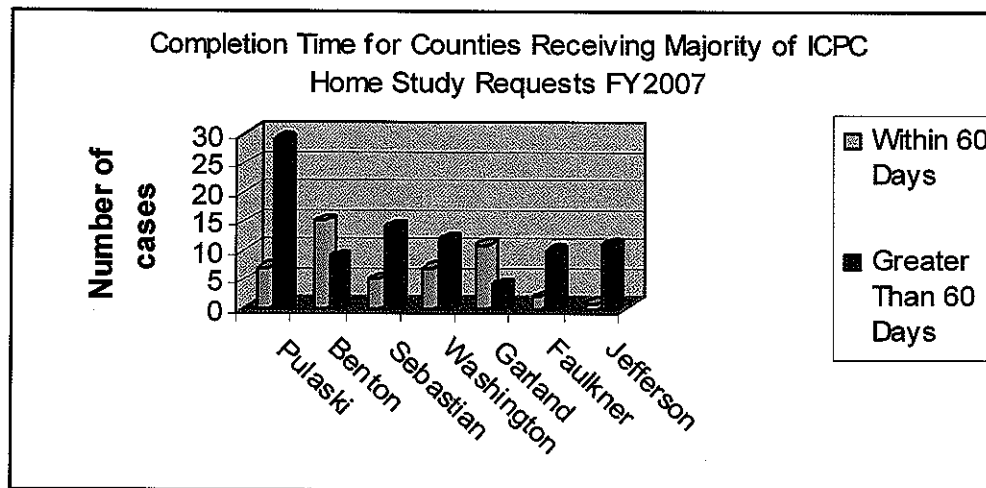
the placement request to the receiving state. This request is accompanied by a packet of materials supporting the home study request. During SFY 2007, Arkansas received 382 requests for out-of-state home studies. The states from which requests for home studies were received most frequently included Texas, Oklahoma, California, Missouri, Florida, Louisiana, and Michigan which sent 231 of the total home study requests.



Arkansas counties receiving 50% of the home study requests from other states are:

	No. home study requests received
Pulaski County	36
Benton County	24
Sebastian County	19
Washington County	19
Garland County	15
Faulkner County	12
Jefferson County	12

The performance of these counties in terms of timely completions of home studies varied. Only two of the most frequently sending counties, Benton and Garland, completed the majority of their home studies within 60 days. Other counties experienced a significantly high rate of overdue home studies such as Jefferson County at 92%, Faulkner County at 83%, Pulaski County at 81%, and Sebastian County at 74%.

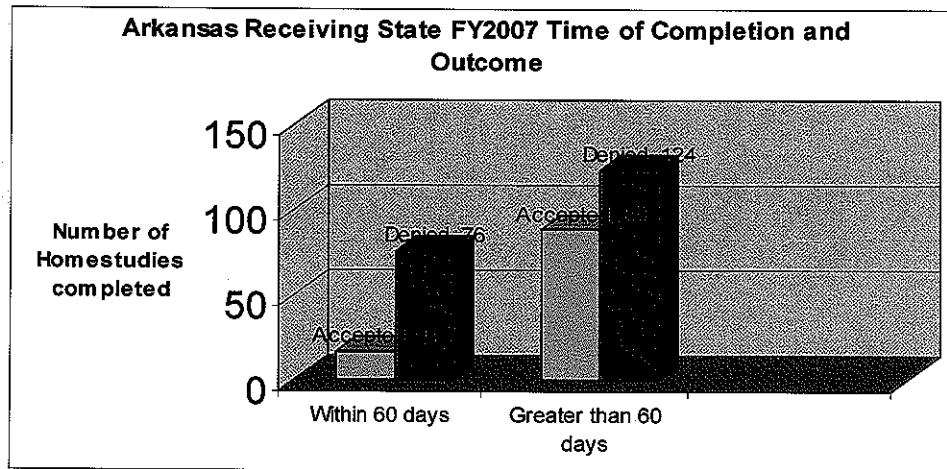


42 U.S.C.A. 671(a)(26) (2006) requires that the receiving state complete the home study and report back to the sending state within 60 days. Arkansas received 382 requests for ICPC home studies from other states of which 306 were completed.¹⁵

Home Studies were completed within 60 days for 93 of the 306 completed cases (30%). Of the timely completed home studies, 17 (18%) were approved and 76 (82%) were denied by Arkansas.

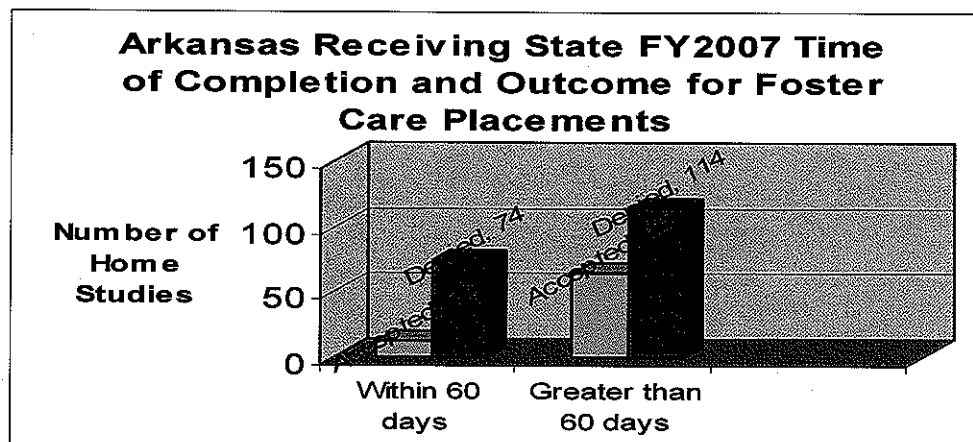
Two hundred and thirteen (213) of the home studies (70%) were not completed within 60 days. Of these, 89 (42%) were approved and 124 (58%) were denied. Of the home studies exceeding the time limit, 32 were within 75 days while 181 took longer. Of those exceeding 75 days, the average time to completion was about 176 days. The greatest time to completion was 558 days.

¹⁵ Of the remaining 76 cases, 12 were withdrawn, 2 received no response from the prospective custodian, 1 child died, and the database offers no explanation for the non-completion of the remaining 61 cases.

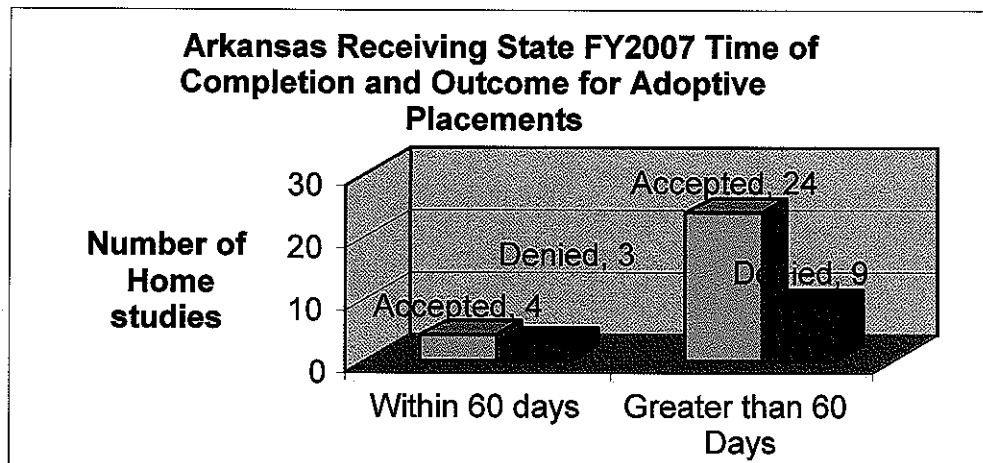


Differences existed in the rates and times of approval between cases in which a foster placement home study was requested and those in which an adoptive home study was requested when Arkansas was the receiving state. Foster care placements were sought in 266 cases and adoptive placements were sought in 40 cases.

When an interstate foster home placement was being sought, 87 home studies (33%) were completed within 60 days while 179 (67%) were not timely. Of the timely home studies, 13 (15%) were approved and 74 (85%) were denied. When the home study was not timely, 65 (36%) were approved and 114 (64%) were denied.

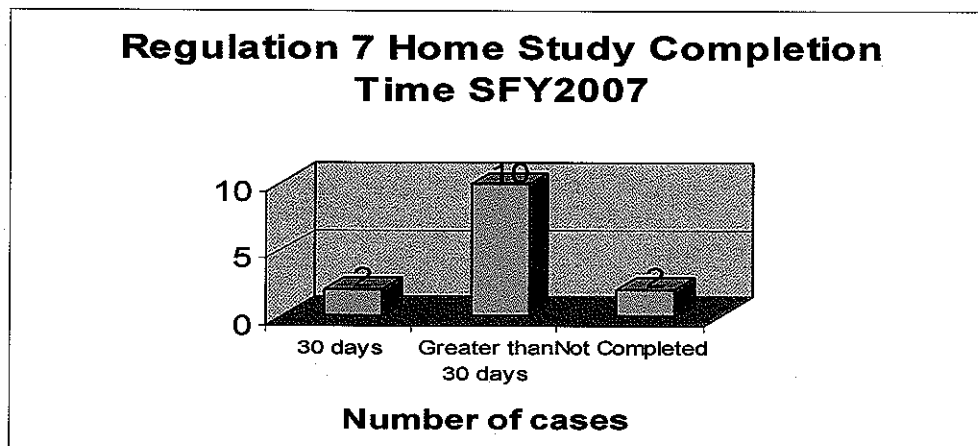


When an adoptive placement was being sought, seven (17%) of the 40 home studies were completed within 60 days and 33 (82%) were not timely. Of the timely home studies, four (57%) were approved and three (43%) were denied. When the home study was not timely, 24 (73%) were approved and nine (27%) were denied.



Regulation 7 priority cases:

Fourteen of the requests for home studies sent to Arkansas by other states were Regulation 7 priority request cases. Of those, two cases (14%) were completed within 30 days. Ten home studies (72%) were completed after the 30 day time limitation and two home studies (14%) were not completed at all.¹⁶



¹⁶ The dates home study requests were received by Arkansas for these cases were 7/14/06 and 6/5/07.

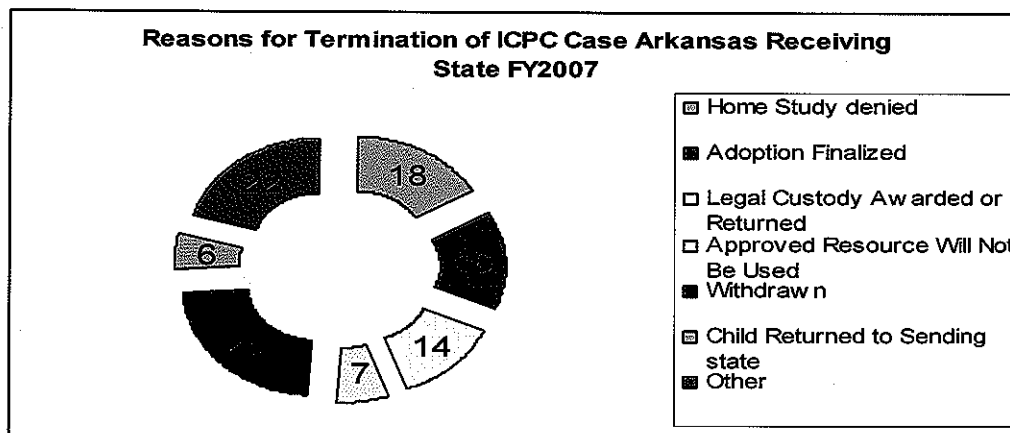
When the home studies were completed timely, no cases were approved by the Arkansas as the receiving state and two were denied. Of the ten home studies taking longer than 30 days, one was approved and nine were denied.

Placements not made within six months:

If placement is not made within six months of the ICPC home study, the home study must be repeated. Arkansas had four cases in which children were not placed within six months and approval expired.

ICPC Case Termination

The ICPC case may be terminated for a variety of reasons. These include: Finalization of the adoption; the child reaches majority; the child is emancipated; the child is returned to the sending state; the child is returned to the parent or placed with a relative with approval from both the sending and receiving states; jurisdiction is transferred; or the receiving state concurs in closure of the case. In foster care and adoption cases in which Arkansas is the receiving state, the following reasons for closure have been recorded for 108 cases opened in FY2007.



Of 108 cases terminated, the most common reasons for closure were that “home study request withdrawn”, “the home study was denied”, “the adoption was finalized”, and “legal custody and/or guardianship was awarded and/or custody was returned”.

Case File Example of Failure of the ICPC Process

Two siblings, ages 3 and 5, had been in foster care in Missouri for over 18 months. In August 2006, the Missouri court closed the case and returned the children to the parents when the Missouri judge became frustrated by a lack of ICPC compliance in Arkansas.

The parents moved to Arkansas and the children were removed from the parents in Arkansas in December 2006 due to physical abuse and manufacturing methamphetamine in the home with the children present. Arkansas DCFS initiated a home study on the former foster family in Missouri and the children were placed there in March 2007 through ICPC. Several hearings were held and court files reveal that testimony was provided by a therapist and the foster parent in Missouri by telephone.

In February 2008, parental rights were terminated and the goal was for the foster family in Missouri to adopt the children. In June 2008, a review hearing was conducted and Arkansas DCFS was found not to have made reasonable efforts to finalize the permanency of the children in that the agency failed to provide continued counseling as ordered and the adoption and disclosure packet had not been completed timely.

Support for changes to ICPC law, process, and policy:

Questions were asked as a part of the survey to measure the level of support for particular changes to ICPC law or process. The questions and their results are summarized below:

Asked of 114 judicial and non-judicial respondents:

The final approval of an interstate placement of a foster child should be vested in the sending court after the court has received a home study from the receiving state. The child welfare agency in the receiving state should not have final approval on children entering their state.	Agree 83%	Disagree 17%
I would support a change to the current process on the interstate placement of children that holds the state child welfare agencies accountable for timely home studies and timely progress reports.	Yes 95%	No 5%

Asked of an average of 145 non-judicial respondents:

I would support concurrent jurisdiction when a child is placed out of state, which would mean that the sending court would retain jurisdiction and the receiving state court would also have jurisdiction in the receiving state and would have court hearings to review the child's status while placed in the state, allowing in-person testimony from the child, the caregiver, and child welfare staff in the receiving state.	Yes 71%	No 29%
I would support a provisional out of state placement with a non-offending parent pending completion of a full home study if no evidence to the contrary exists that the non-offending parent would be an inappropriate placement.	Yes 86%	No 15%

I would support a requirement that all ICPC packets and progress reports be submitted electronically to facilitate timely receipt of documents between the two states.	Yes 94%	No 6%
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Asked of 22 judicial respondents:

Would you support changes to ICPC to provide a transfer of jurisdiction to the out-of-state court if a child has lived in the receiving state for a certain period of time (i.e. six months or one year)?	Yes 100%	No 0%
Would you support changes to ICPC that would provide the judiciary, not the state agency, the authority to finalize ICPC placements?	Yes 82%	No 18%

Comments

Comments included in the surveys shed light on some of the challenges and concerns of stakeholders working with ICPC cases. Several comments centered on the application of ICPC to parents and suggested that ICPC should not apply to non-offending parents if all other indicators suggest that the home is suitable; that ICPC should not apply to parents at all; and that the parent should reside in the state in which the child is placed to facilitate visitation and reunification.

Several comments dealt with the need for electronic submission of packets and reports and also the need for an accurate and accessible tracking system for ICPC cases. Many comments centered on the need for more DCFS resources and training for ICPC cases.

Accountability was also a common theme in the comments sections. Many respondents felt there should be accountability to encourage more efficient ICPC processes. Also, some respondents felt there should be more due process, specifically in challenging denied home studies. Respondents generally believed that improved communications would be a positive factor in expediting the process.

SUMMARY AND FINDINGS

To assess Arkansas' experience in working with the ICPC, various types of data were evaluated: Statistical data from SFY 2007 from the Arkansas DHS ICPC database; surveys completed by judges, attorneys, and others working with ICPC cases in the state courts; and court file reviews in the county with the highest number of ICPC home study requests being sent to other states and interviews with attorneys in that county.

In the State Fiscal Year (SFY) 2007, the state of Arkansas opened 691 ICPC cases. Three hundred and nine (309) requests for home studies were sent by Arkansas to other states and 382 requests for home studies were sent to Arkansas by other states. The states to which Arkansas sent the most requests as well as the counties in Arkansas sending the most requests are noted below.

Total ICPC Cases

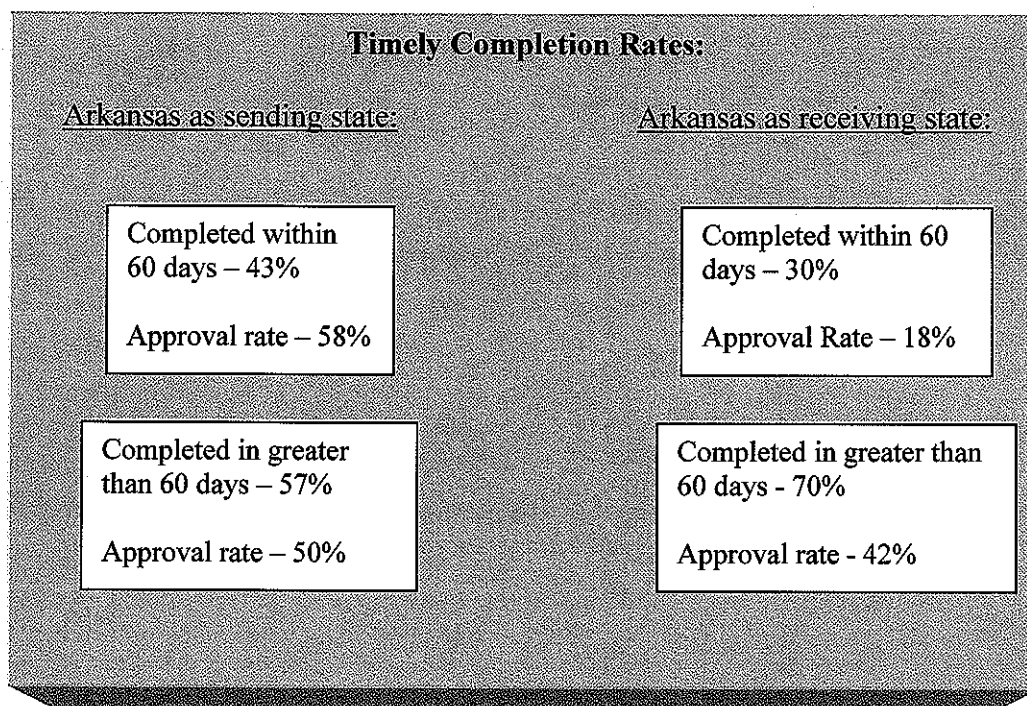
Home studies sent by Arkansas to other states: (In order of frequency)	
<u>States most frequently sent to:</u> <i>Sending 41% of requests</i>	<u>Counties sending most requests:</u> <i>Sending 51% of requests</i>
Texas	Sebastian
Oklahoma	Washington
Missouri	Pulaski
	Miller
	Benton
	Mississippi

The states from which Arkansas receives the most home studies requests are noted below. Also noted are the counties receiving the most requests from other states including the percentage of home studies each county completed within 60 days.

Home studies received by Arkansas from other States: <i>(In order of frequency)</i>	
<u>States most frequently sending to AR:</u> <i>Sending 60% of requests</i>	<u>Counties most frequently Receiving from other states</u> <i>Receiving 50 % of requests [Including percentage of home studies completed timely]</i>
Texas	Pulaski 19%
Oklahoma	Benton 63%
California	Sebastian 17%
Missouri	Washington 24%
Florida	Garland 73%
Louisiana	Faulkner 17%
Michigan	Jefferson 8%

42 U.S.C.A. 671(a)(26) (2006) requires that the receiving state complete the home study and report back to the sending state within 60 days. Arkansas sent 309 requests for ICPC home studies to other states of which 274 were completed and Arkansas received 383 requests for ICPC home studies from other states of which 306 were completed. The following chart compares the percentages completed within and outside of the time frame and the percentage of home studies completed timely.

State ICPC Performance Comparison



For cases exceeding 60 days to completion, the average time to complete was 110 days when Arkansas was the sending state, and 176 days when Arkansas was the receiving state.

Only 43% of home studies sent by Arkansas to other states were completed in compliance with ICPC. Arkansas fared even worse by timely completing only 30% of home studies requested by other states.

The perception of survey respondents of the timeliness of home study completion is that compliance is considerably lower than the statistical data indicated. Survey results indicated that only 3% of respondents experienced ICPC home study completion within 60 days compared to the 43% actual timely completion rate from the DHS database.

Arkansas also denies a higher percentage of home studies than other states in this analysis; however, no state in this analysis evidenced a high rate of approved home studies. Arkansas attorneys, judges, and others working with ICPC cases in the state's courts were asked about the number of home studies denied by other states which would have been approved if conducted in Arkansas. As discussed in detail in the data analysis, their responses total a high number. This indicates that respondents felt that either the home studies were sometimes inappropriately denied by other states, or that other states have higher approval standards than Arkansas; in other words that there is a lack of uniformity in standards between the states.

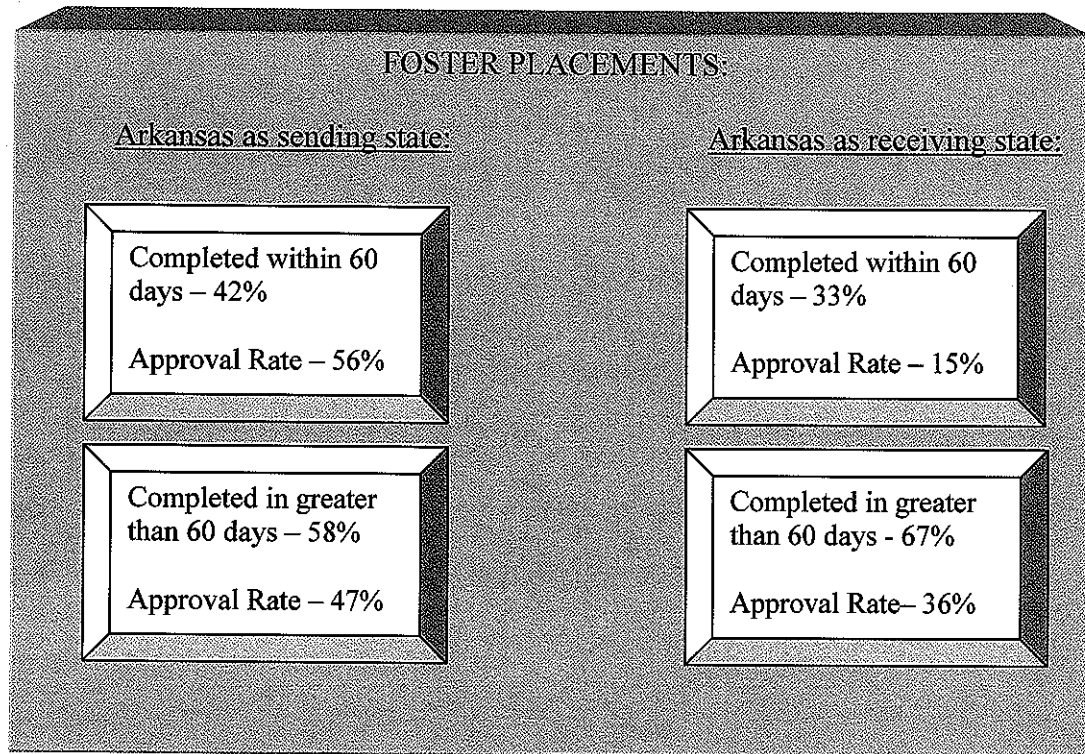
Despite their belief that some denied home studies in other states should have been approved, respondents generally did little to challenge the home studies. Only 19% have made a challenge and of those, 74% were unaware of how the challenge turned out. Just 14% of the challengers were successful in his/her challenge to the denied home study.

Foster Care Cases

Foster care placements were sought in 244 cases when Arkansas was the sending state. When an interstate foster home placement was being sought, 103 home studies (42%) were completed within 60 days while 141 (58%) were not timely. Of the timely home studies, 58 (56%) were approved and 45 (44%) were denied. When the home study was not timely, 66 (47%) were approved and 75 (53%) were denied.

When Arkansas was the receiving state, interstate foster care placements were sought in 266 cases. Eighty-seven (87) home studies (33%) were completed within 60

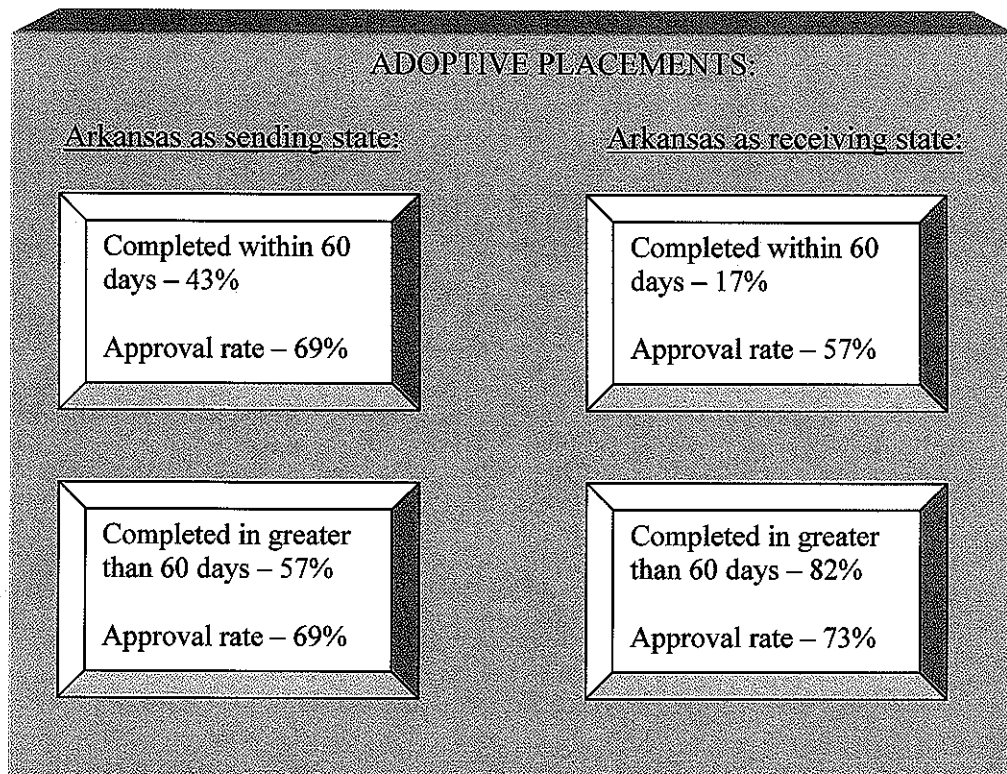
days while 179 (67%) were not timely. Of the timely home studies, 13 (15%) were approved and 74 (85%) were denied. When the home study was not timely, 65 (36%) were approved and 114 (64%) were denied.



Adoption Cases

Adoptive placement home studies were sought in 30 cases when Arkansas was the sending state. Thirteen (43%) of the 30 home studies were completed within 60 days and 17 (57%) were not timely. Of the timely home studies, nine (69%) were approved and four (31%) were denied. When the home study was not timely, 12 (71%) were approved and five (29%) were denied.

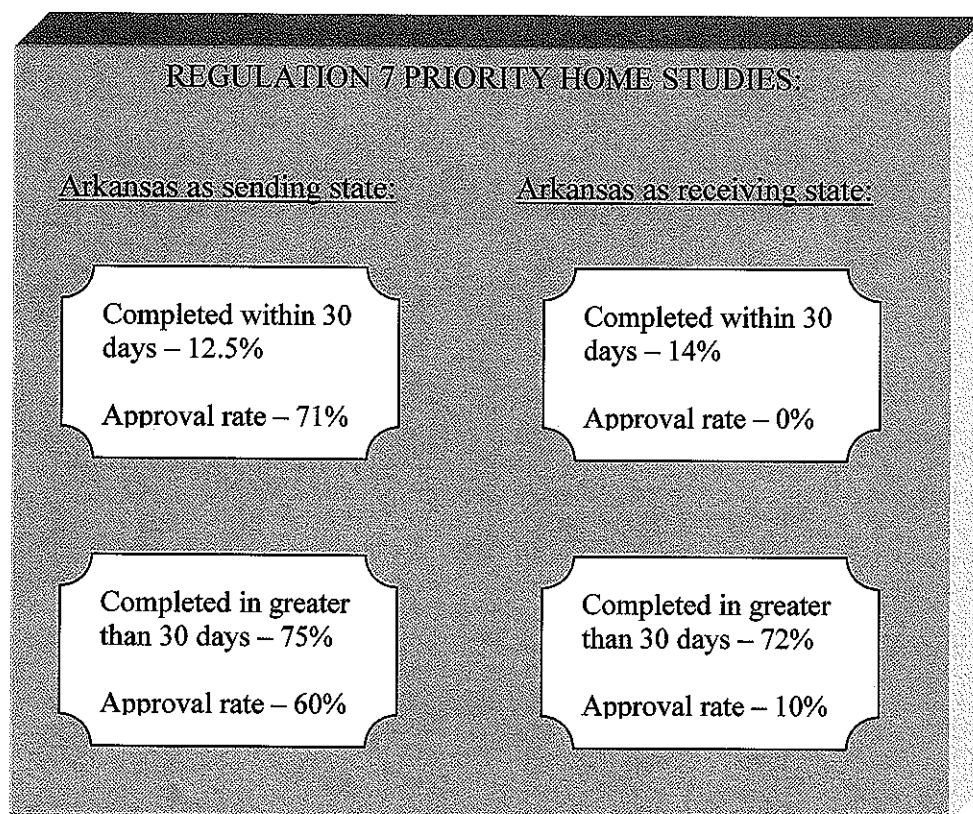
Arkansas received 40 requests for adoptive placement home studies. Seven (17%) of the 40 home studies were completed within 60 days and 33 (82%) were not timely. Of the timely home studies, 4 (57%) were approved and 3 (43%) were denied. When the home study was not timely, 24 (73%) were approved and 9 (27%) were denied.



Regulation 7 cases

Regulation 7 cases represent 18% of all home study requests sent by Arkansas to other states and 4% of all home study requests sent to Arkansas by other states. Arkansas sent 56 priority home study requests to other states and seven (7) cases, or 12.5%, were completed within 30 days. 71% of these were approved. Forty-two home studies (75%)

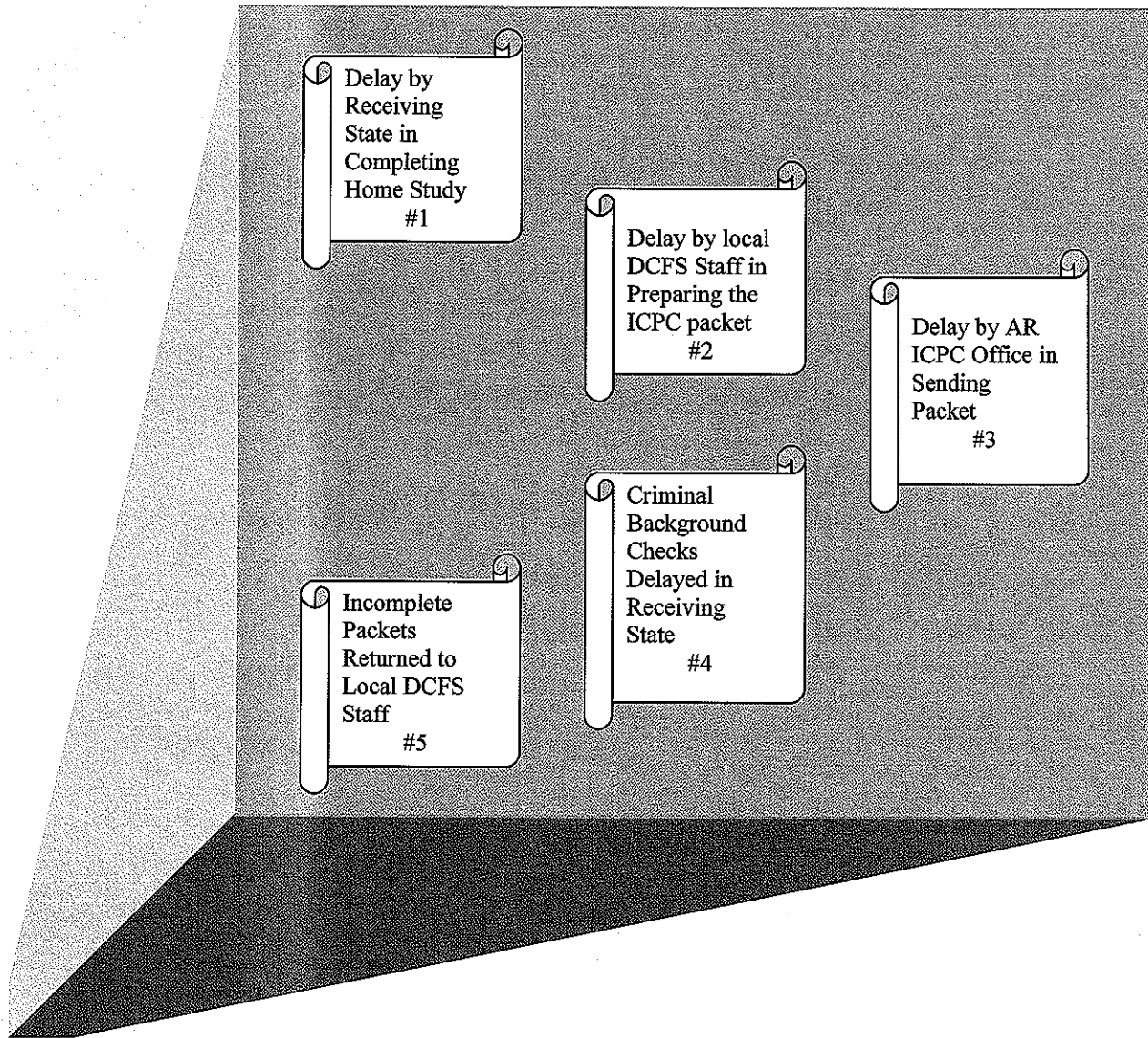
were completed after the 30 day time limitation with 60% approved, and 7 home studies (12.5%) were not completed at all when Arkansas was the sending state. Arkansas received 14 requests for priority home studies and 2 cases (14%) were completed within 30 days with none of them approved. Ten home studies (72%) were completed after the 30 day time limitation and 72% of these were approved. Two home studies (14%) were not completed at all.



Barriers to Timely Home Study Completion

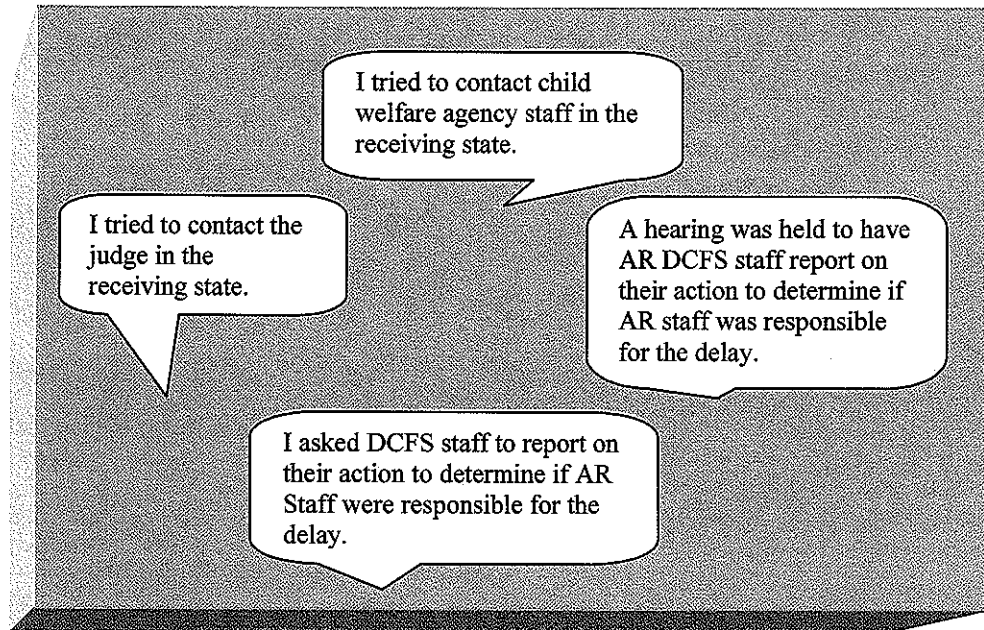
The low performance rates in ICPC compliance shifted the focus of this assessment to discovering why the process was burdened with inefficiency and ineffectiveness. Much of the discovery was performed through surveys.

Survey respondents identified several barriers to ICPC compliant home study completion. In order of severity of frequency, the following barriers were offered:



Other factors contributed to an inefficient and often ineffective ICPC process. The majority of judges, attorneys, and other stakeholders felt that the process was impeded by a lack of communication, cooperation, and accountability.

Most stakeholders have taken some action to help expedite the home study process. A majority of the non-judicial respondents (58%) have taken action such as:



Many respondents added that they are generally not allowed to talk to staff in other states, while other respondents advised that such access sometimes depends on the state they are working with. Most judges (82%) advise that they talk to judges in other states to help expedite the ICPC process.

Because the barriers to ICPC compliance are so prevalent, respondents advised that they take steps to avoid the process.

40% of Non-Judicial Respondents Have Facilitated Placement of a Child Out-of-State in Avoidance of ICPC

72% of Judges Have Entered a Custody Order and Closed the Case to Avoid ICPC

The ICPC assessment also explored the impact of progress reports, testimony and information at hearings, court orders with specific time lines, and the timeliness of hearings.

Reports on the progress or status of Arkansas children placed out-of-state through ICPC cases are generally not being received. Twenty-three percent (23%) of survey respondents affirm receipt of reports and the file review in Sebastian County revealed that reports were received in only 19% of ICPC cases.

Testimony and information from the receiving state were not regularly received.

Percentage of Respondents Reporting Receipt of:

- 11% Testimony by Receiving State Staff
- 51% Testimony by Receiving State Caregiver
- 45% Written Information From Receiving State Caregiver
- 23% Written Reports From Receiving State
(non-judicial respondents)
- 14% Written Reports From Receiving State
(judicial respondents)

Orders from the court with specific timelines for completion of home study requirements are sometimes entered by the court. The frequencies reported by judges who have presided over ICPC cases are as follows:

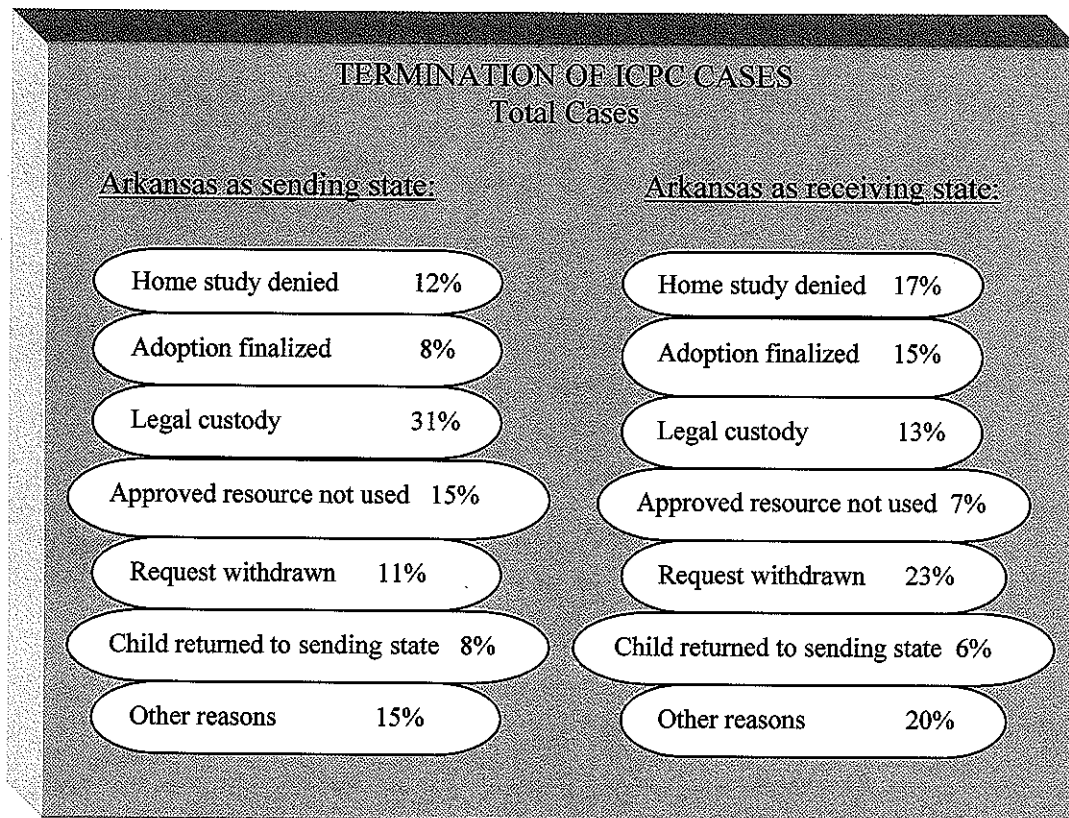
- Always 5%
- Often 35%
- Seldom 30%
- Never 25%

Hearings are generally held in a timely manner in ICPC cases. Eighty-six percent (86%) of judges advise they hold a hearing every 3 to 6 months and 75% of

non-judicial respondents believed that hearings were timely. Only 9% felt hearings were not timely and 16% had not yet been involved in a case with an ICPC placement. The file review and attorney interview in Sebastian County supported that timely hearings were consistently held in that county.

Termination of ICPC cases

Finally, the assessment team analyzed ICPC case termination. The chart below lists the reasons for closure in foster care and adoption cases in which Arkansas is the receiving state (108 cases opened in FY2007) and also foster care cases in which Arkansas is the sending state (130 cases opened in 2007).



APPENDICES

**Appendix A Arkansas Judicial Council Resolution: S.2779
The Orderly and Timely Placement of Foster
Children Placement Act**

Appendix B: Dependency-Neglect Proceedings

Appendix C: ICPC

Appendix D: DCFS ICPC Policy

**ARKANSAS JUDICIAL COUNCIL
RESOLUTION TO REQUEST SENTATOR LINCLON
TO AMEND S.2779**

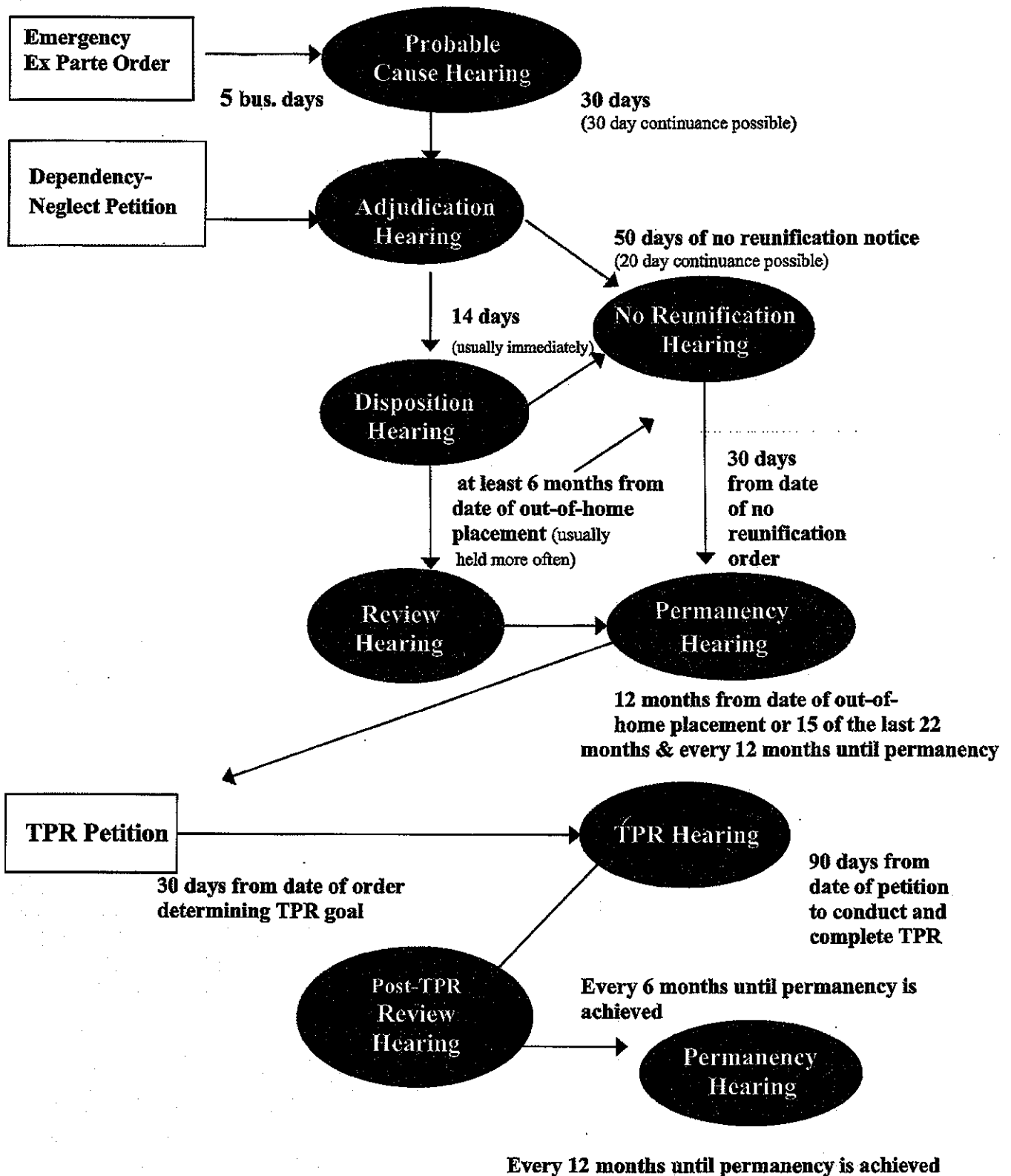
The Orderly & Timely Placement Of Foster Children Placement Act

Whereas, the Interstate Compact on Placement of Children (ICPC) was drafted more than 40 years ago, is outdated and is a barrier to the timely and safe placement of children across State lines.

Whereas, in order to ensure that children are placed in a safe and timely manner across state lines, the following amendments to S.2779 must be added:

- ✓ Interstate plans including home studies within 60 days and a plan for services and supervision, if needed, shall be submitted to the sending state court;
- ✓ Sending state courts shall conduct expedited hearings to review the interstate placement plan, due process will be provided to persons in the receiving state, and sending state courts will determine if the out of state placement is in the best interest of the child;
- ✓ There shall be direct communication between local agencies in different states and any other communication to expedite and ensure the safety and timely placement of children between state agencies;
- ✓ Mandatory uniform reporting forms for home studies and interstate plans for services and supervision will be developed;
- ✓ Sending states may arrange for private providers or their own staff, in keeping with the state licensure laws of the sending state, to travel to the receiving state to ensure timely interstate placements;
- ✓ Clear guidelines for the transfer of jurisdiction from the sending to the receiving state and financial responsibility upon such transfer shall be established
- ✓ Courts shall provide full faith and credit to child abuse and neglect orders from other states

Dependency-Neglect Proceedings



Created by: Connie Hickman Tanner
AOC Director Of Juvenile Division Courts

Dependency-Neglect Overview

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Prepared by Connie Hickman Tanner

Updated: October 2007

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New
Rights!

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DEPENDENCY-NEGLECT OVERVIEW

Updated October 2007

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I. CIRCUIT COURT JURISDICTION

The assignment of juvenile cases to the juvenile division of circuit court shall be described by Supreme Court Administrative Order Number 14. The Circuit Court shall have exclusive original jurisdiction and shall be the sole court for the following proceedings, including but not limited to:

A. Dependent-Neglected Juveniles

1. Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to 18, except a juvenile adjudicated prior to the age of 18 may request the court to continue jurisdiction until the age of 21 as long as the juvenile engages in or has a viable plan for a course of treatment or instruction. **Ark. Code Ann. §9-27-306(a)(1)(B)(i) (Supp. 2007).**
2. If a juvenile was adjudicated dependent or dependent-neglected and was in foster care at 18 years of age and left foster care but decides to return prior to the age of 21 to benefit from independent living services, the juvenile may contact his/her AAL to petition the court to return to the court's jurisdiction to receive independent living services. **Ark. Code Ann. §9-27-306(a)(1)(B)(ii) (Supp. 2007).**

Dependent-neglected juvenile means any juvenile who is at substantial risk of harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile: abandonment, abuse, sexual abuse, sexual exploitation, neglect, parental unfitness, being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of the parent, guardian or custodian, and dependent juveniles. **Ark. Code Ann. §9-27-303(18) (Supp. 2007).**

DHS filed a petition for writ of certiorari arguing that the trial court exceeded its jurisdiction when it split legal and physical custody between a maternal grandmother and DHS following an adjudication hearing. The Court stated that DHS confused the court's jurisdiction, which is a court's ability to act, with a court's error in interpreting a statute. Jurisdiction is the power of the court to hear and determine the subject matter in controversy between the parties. The trial court had jurisdiction to enter an order establishing custody. The proper subject of an appeal is whether the court correctly interpreted the statute in making its custody decision. The writ of certiorari was denied. Ark. Dep't of Human Servs. v. Circuit Court of Sebastian County, 363 Ark.

389, 214 S.W.3d 856 (2005).

The trial court was reversed for failure to adjudicate the siblings of a child who was found dependent-neglected. Evidence included a severe whipping, pouring salt into the wounds, keeping the child in the same pair of underwear for two days while bleeding and oozing caused his underwear to stick to his rear, and failure to seek medical care. The child abuse of one child demonstrated parental unfitness that put the other siblings at substantial risk of harm. Arkansas Dep't of Human Servs. v. Jorden, 80 Ark. App. 104, 91 S.W.3d 536 (2002).

A dependent-neglected child is one who is at risk of serious harm from an unfit parent and such unfitness is not necessarily predicated upon the parent actually causing some direct injury to the child in question. Further, the juvenile court is a court of competent jurisdiction to determine that a parent committed a serious felony assault that results in serious bodily injury. Brewer v. Arkansas Dep't. Of Human Servs., 71 Ark. App. 364, 32 S.W.3d 22 (2001) (substituted opinion on grant of rehearing delivered April 25, 2001).

Juvenile courts have exclusive original jurisdiction for proceedings in which a juvenile is alleged to be dependent-neglected. The juvenile code provides that petitions for dependency-neglect may be filed by any adult. Although appellant argued that the juvenile courts were not intended to assume jurisdiction over ordinary custody matters, the appellate court noted that the allegations of dependency-neglect separated the case from those involving ordinary custody matters. The trial judge was correct in reasoning that the consolidation of the three divorce proceedings with the juvenile action was appropriate to prevent conflicting custody orders within the same judicial district. Lowell v. Lowell, 55 Ark. App. 211, 934 S.W.2d 540 (1996).

- a. **Abandonment** means the failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact, when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future, and failure to support or maintain regular contact with the juvenile without just cause, or an articulated intent to forego parental responsibility. Ark. Code Ann. §9-27-303(2) (Supp. 2003).
- b. **Abandoned Infant** means a juvenile less than nine months of age and whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an

expression of intent by words, actions, or omissions not to return for the infant. **Ark. Code Ann. §9-27-303(1) (Supp. 2007).**

- c. **Abuse** means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person 18 or older living in the home with the child or any person entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:
- (1) Extreme or repeated cruelty to a juvenile; **Ark. Code Ann. §9-27-303(3)(A)(i) (Supp. 2007).**
 - (2) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ; **Ark. Code Ann. §9-27-303(3)(A)(ii) (Supp. 2007).**
 - (3) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior; **Ark. Code Ann. §9-27-303(3)(A)(iii) (Supp. 2007).**
 - (4) Any injury which is at variance with the history given; **Ark. Code Ann. §9-27-303(3)(A)(iv) (Supp. 2007).**
 - (5) Any non-accidental physical injury; **Ark. Code Ann. §9-27-303(3)(A)(v) (Supp. 2007).**
 - (6) Any of the following intentional or knowing acts, with physical injury:
 - (A) throwing, kicking, burning, biting or cutting a child;
 - (B) striking a child with a closed fist;
 - (C) shaking a child; or
 - (D) striking a child on the face. **Ark. Code Ann. §9-27-303(3)(A)(vi) (Supp. 2007).**
 - (7) Any of the following intentional or knowing acts, with or without physical injury and without justifiable cause:

- (A) striking a child age six or younger on the face or head;
- (B) shaking a child age three or younger;
- (C) interfering with a child's breathing;
- (D) urinating or defecating on a child;
- (E) pinching, biting or striking a child in the genital area;
- (F) Giving or permitting a child to consume or inhale a poisonous or noxious substances not prescribed by a doctor that has the capacity to interfere with normal physiological functions;
- (G) Giving or permitting a child to consume or inhale a substance not prescribed by a doctor that has the capacity to alter the mood including but not limited to: marijuana, alcohol (excluding alcohol recognized religious ceremony or service), narcotics, or over-the-counter drugs purposely administered as an overdose or inappropriately given so the child is detrimentally impacted;
- (H) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including but not limited to chemicals used during the manufacture of methamphetamine;
- (I) Subjecting a child to Munchausen Syndrome by Proxy when reported and confirmed by medical personnel or a medical facility; **Ark. Code Ann. §9-27-303(3)(A)(vii) (Supp. 2007).**

(8) This list is illustrative of unreasonable action and is not intended to be exclusive. No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse. **Ark. Code Ann. §9-27-303(B) (Supp. 2007).**

(9) **"Abuse" shall not include** physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. It is not abuse when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

(A) The person exercising the restraint is an employee of an agency licensed or exempted from licensure under the Child Welfare Licensing Act;

(B) The agency has policy and procedures regarding restraints;

(i) no other alternative exists to control the child except for a restraint;

(ii) the child is in danger of hurting himself/herself or others;

(iii) the person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and

(iv) the restraint is for a reasonable period of time. **Ark. Code Ann. §9-27-303(C)(i-ii) (Supp. 2007).**

(10) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause, and which does cause, injury more serious than transient pain or minor temporary marks. **Ark. Code Ann. §9-27-303(C)(iii) (Supp. 2007).**

(11) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate. **Ark. Code Ann. §9-27-303(C)(iv) (Supp. 2007).**

d. **Neglect** means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, which constitute:

(1) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;

- (2) Failure or refusal to provide the necessary food, clothing, shelter and education required by law, including failure to follow an individualized education program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected.
- (3) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness where the existence of such condition was known or should have been known;
- (4) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide shelter that does not pose a risk of health or safety to the juvenile;
- (5) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;
- (6) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume the responsibility; or
- (7) Failure to appropriately supervise the juvenile that results in a juvenile being left alone at an inappropriate age or in inappropriate circumstances, creating a dangerous situation or a situation which puts the juvenile at risk of harm. Ark. Code Ann. §9-27-303(36)(A) (Supp. 2007).
- (8) Neglect shall also include causing a newborn to be born with:
 - (A) an illegal substance (a drug prohibited to be used or possessed without a prescription under the Ark. Crim. Code §5-1- 101 *et seq.*) present in the newborn's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the newborn. A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect pursuant to this subsection.
 - (B) a health problem as a result of the pregnant mother's use before birth of an illegal substance (a drug prohibited to be used or possessed without a prescription under the Ark. Crim. Code §5-1- 101 *et seq.*). A test of the child's or

mother's bodily fluids or bodily substances may be used as evidence to establish neglect pursuant to this subsection. Ark. Code Ann. §9-27-303(36)(B) (Supp. 2007).

e. **Sexual abuse** means sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion (including attempted), indecent exposure, or forcing the watching of pornography or live human sexual activity by a person 10 years or older to a person younger than 18. Ark. Code Ann. § 9-27-303(50)(A) (Supp. 2007).

(1) Sexual intercourse, deviate sexual activity or sexual contact (including attempted) by a person 18 years or older to a person not his/ her spouse who is younger than 16. Ark. Code Ann. §9-27-303(50)(B)(Supp. 2007).

(2) Sexual intercourse, deviate sexual activity or sexual contact (including attempted) by sibling or a caretaker to a person younger than 18. Ark. Code Ann. §9-27-303(50)(C) (Supp. 2007).

(3) Forcing or encouraging the watching of pornography, forcing permitting or encouraging the watching of live sexual activity, forcing listening to phone sex line, or an act of voyeurism as defined by Ark. Code Ann. §5-16-102 by a caretaker to a person younger than 18. Ark. Code Ann. §9-27-303(50)(D) (Supp. 2007).

(4) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion (including attempted) by a person younger than 10 to a person younger than 18. Ark. Code Ann. §9-27-303(50)(E) (Supp. 2007).

(A) **Caretaker** means a parent, guardian, custodian, foster parent or any person 10 years or older entrusted with a child's care by a parent, guardian, custodian or foster parent, including but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare. Ark. Code Ann. §9-27-303(8) (Supp. 2007).

(B) **Forcible compulsion** means physical force, intimidation or threat (express or implied) of death, physical injury to, rape, sexual abuse or kidnapping of any person. If the act

was committed against the will of the juvenile, then a forcible compulsion has been used.

- (C) The age, developmental stage, and stature of the victim and the relationship between the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove compulsion. **Ark. Code Ann. §9-27-303(27) (Supp. 2007).**
- (D) **Sexual contact** means any act of sexual gratification involving touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile, or the breast of a female, encouraging the juvenile to touch the offender in a sexual manner, or the requesting the offender to touch the juvenile in a sexual manner. Evidence of **sexual gratification** may be inferred from the attendant circumstances surrounding the investigation of the specific complaint of child maltreatment. Nothing in this section shall permit normal affectionate hugging to be construed as sexual contact. **Ark. Code Ann. §9-27-303(51) (Supp. 2007).**
- (E) **Deviant sexual activity** means any act of sexual gratification involving:
 - (i) penetration, however slight, of the anus or mouth of one person by the penis of another person; or
 - (ii) penetration, however slight, of the labia majora or anus of one person by a body member or foreign instrument manipulated by another person. **Ark. Code Ann. §9-27-303(21) (Supp. 2007).**
- (F) **Sexual exploitation** includes allowing, permitting, or encouraging participation or depiction of the juvenile in prostitution, obscene photographing, filming, or obscenely depicting, obscenely posing or obscenely posturing a juvenile for any use or purpose. **Ark. Code Ann. §9-27-303(52) (Supp. 2007).**

B. Dependent Juveniles

1. A child of a parent who is in DHS custody;
2. A child whose parent or guardian is incarcerated and the parent or guardian has no appropriate relative or friend willing or able to provide for the child;
3. A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent or guardian cannot provide care for the juvenile, and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;
4. A child whose custodial parent dies and no stand-by guardian exists;
5. A child who is an infant relinquished to DHS custody for the sole purpose of adoption;
6. A safe haven baby, pursuant to Ark. Code Ann. §9-34-201 *et seq.*, or
7. A child who has disrupted his/her adoption and the adoptive parents has exhausted resources available to them. **Ark. Code Ann. §9-27-303(17) (Supp. 2007).**

C. Emergency Custody/72-Hour Hold

The circuit court shall have jurisdiction in proceedings in which emergency custody or a 72-hour hold has been placed on a juvenile pursuant to Ark. Code Ann. §9-27-313 or Ark. Code Ann. §12-12-516. **Ark. Code Ann. §9-27-306(a)(1)(C) (Supp. 2007).**

D. Termination of Parental Rights

A TPR petition may be filed by DHHS or the attorney ad litem for juveniles under the jurisdiction of the juvenile division court. **Ark. Code Ann. §9-27-306(a)(1)(E) (Supp. 2007); Ark. Code Ann. §9-27-341(a)(1)(A) (Supp. 2007).**

The Arkansas Supreme Court found that the juvenile court had jurisdiction over the father in termination case filed subsequent to dependency-neglect case. Arkansas Dep't of Human Servs v. Farris, 309 Ark. 575, 832 S.W.2d 482 (1992).

E. DHHS Custody

1. Proceedings where custody of a juvenile is transferred to DHHS or proceedings for which custodial placement proceedings are filed by DHHS. **Ark. Code Ann. §9-27-306(a)(1)(F and I) (Supp. 2007).**

2. When DHHS exercises custody of a juvenile pursuant to Ark. Code Ann. §12-12-516 (72-hour hold) and DHHS files a dependency-neglect petition concerning that juvenile, any party to that proceeding may file a motion to transfer any other legal proceeding concerning the juvenile to the court hearing the dependency-neglect petition. Upon such motion being filed, the other legal proceeding shall be transferred to the court hearing the dependency-neglect case. **Ark. Code Ann. §9-27-306(a)(3)(A-B) (Supp. 2007).**

F. Adoption

1. The court shall retain jurisdiction to issue orders of adoption, interlocutory or final, if a juvenile is placed outside of the state of Arkansas. **Ark. Code Ann. §9-27-306(a)(4) (Supp. 2007).**
2. Adoptions may be filed in a juvenile court that has previously asserted continuing jurisdiction of the juvenile. **Ark. Code Ann. §9-27-307(a)(4) (Supp. 2007).**

G. Guardianship

1. If a juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code, the guardianship petition shall be filed in that case. **Ark. Code Ann. §28-65-107(c) (Supp. 2007).**
2. Guardianships may be filed in a juvenile court that has previously asserted continuing jurisdiction of the juvenile. **Ark. Code Ann. §9-27-307(a)(4) (Supp. 2007).**

H. Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)

The circuit court shall have jurisdiction to hear proceedings commenced in any part of the state or court of comparable jurisdiction of another state which are transferred pursuant to the UCCJEA Ark. Code Ann. §9-19-101 *et seq.* **Ark. Code Ann. §9-27-306(d) (Supp. 2007).**

Appellant did not argue with the trial court's initial jurisdiction with the emergency order, but argued that the trial court lacked jurisdiction because it failed to contact the Louisiana court. However, there was no evidence in the record of a custody order or proceeding in Louisiana identified by appellant pursuant to Ark. Code Ann. §9-19-209. There was no certified copy of a Louisiana custody order ever registered in accord with Ark. Code Ann. §9-19-305. The only evidence was a statement by appellant about a case involving the physical abuse of her daughter five years ago and that the case had been closed.

UCCJEA does not require a trial court who has assumed temporary jurisdiction to return custody to a parent where there is no competing custody order and in such absence Ark. Code Ann. §9-19-204(b) applied and Arkansas became the home state of the children. Davis v. v. Arkansas Dep't. of Human Servs., 98 Ark. App. 275, ___ S.W. 3d ___ (2007).

The trial court was affirmed for dismissing a paternity and child support petition finding that it did not have jurisdiction because Arkansas was not the home state under the UCCJEA. The appellant argued that the paternity statutes, not the UCCJEA, should govern. The UCCJEA is the exclusive method for determining the proper forum in child custody proceedings, including paternity, involving other jurisdictions. The trial court was correct in finding that Arkansas was not the home state. There was evidence that the child lived in South Carolina. There was no evidence that the child had ever lived in Arkansas; no court declined to exercise jurisdiction on the grounds that Arkansas was a more appropriate forum; and no other American court had exercised jurisdiction. Greenhough v. Goforth, 354 Ark. 502, 126 S.W.3d 345 (2003).

The Supreme Court held that the probate court had jurisdiction to consider the guardianship petition. It further held that the Florida ex parte order at issue was void ab initio and invalid on its face; that even had the Florida order been valid, it was not entitled to full faith and credit because it was never registered in Arkansas as required under the UCCJEA. DHS was without authority to seize the child and relinquish the child to Florida in direct violation of an order of a probate court in Arkansas. Arkansas Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

I. Arkansas Supreme Court Administrative Order No. 14

1. The assignment of cases to the juvenile division of circuit courts shall be described by Supreme Court Order No. 14.
2. The definitions of probate and domestic relations are not intended to restrict the juvenile division of circuit court from hearing adoption, guardianship, support, custody, paternity or commitment issues which may arise in juvenile proceedings. **Supreme Court Administrative Order 14 (1)(b) (Adopted April 6, 2001; amended November 1, 2001).**

It was clearly erroneous for the trial court to grant an adoption finding that the appellant failed to have substantial contact or to contribute support. There was no evidence that appellant failed to significantly communicate or provide for her child for a one-year period. The trial

court did not specify the time period for which the contact or contribution failed to occur. Further, the appellate court could not determine from review of the record if it lasted for the statutorily mandated period of one-year. *Ray v. Sellers*, 82 Ark App. 530, 120 S.W.3d 134 (2003).

The trial court did not have jurisdiction to terminate appellant's parental rights. Ark. Code Ann. § 9-9-220 sets out grounds for termination but only in connection with an adoption proceeding. *Hudson v. Kyle*, 352 Ark. 346, 101 S.W.3d 202 (2003).

The Court of Appeals reversed the trial court's order granting appellee putative father's motion to vacate an adoption based upon the trial court's finding that his consent was required. The Court remanded for the trial court to consider A.C.A. '9-9-206 in conjunction with provision '9-9-207, upon which the trial court relied in finding that the appellee's consent was required. The Court of Appeals noted that the two provisions must be read together, and that the trial court should have the first opportunity to analyze the evidence under the appropriate statutory framework. *Britton v. Gault*, 80 Ark. App. 311, 94 S.W. 3d 926 (2003).

Adoption case was certified to the Supreme Court by the court of appeals as presenting an issue of significant public interest. Court affirmed the probate court's reversal of an adoption and held that, before actual notice to a father of the adoption of his biological child may be deemed an adequate substitute for the notice required by Ark. Code Ann. § 9-9-212 and Rule 4 of the Rules of Civil Procedure, that notice must be gained before the entry of the adoption decree. Here, the natural father did not have knowledge of the adoption until after a final decree had been entered that forever terminated his rights as the child's father. Knowledge that an adoption has already occurred is not the same as notice and an opportunity to be heard before parental rights are terminated. Because the father had not been provided the kind of notice contemplated by Ark. Code Ann. § 9-9-212 and the due process provisions of the US and Arkansas constitutions, the one-year limitations provision of section 9-9-216(b) did not bar his petition to set aside the adoption. *Mayberry v. Flowers*, 347 Ark. 476, 65 S.W.3d 418 (2002).

The Court of Appeals affirmed a trial court's overturning an adoption outside the one-year period of time set out in Ark. Code Ann. 9-9-216(b) (Repl. 2002). The trial court had found, and the Court of Appeals affirmed, the factual finding that the adoptive parent(s) had never taken custody of the adoptive child. The Court also affirmed the trial court's finding that a fraud was practiced upon the court in procuring the decree of adoption. *Wunderlich.v. Alexander*, 80 Ark. App. 167, 92 S.W. 3d 715 (2002).

Minor mother challenged an adoption of her child that was granted without the knowledge of her parents in this appeal of the trial court's denial of a petition to set aside the interlocutory order of adoption. The Court of Appeals found that the trial court's finding that the teenager was not under duress when she executed a consent to adopt was not clearly erroneous. Social workers visited her only after she requested help with her baby's adoption, and she testified that neither of them attempted to force her to place her child for adoption, but that she made the decision herself. She was provided a guardian ad litem who explained the process of consenting and of revoking her consent. The Court pointed out that consent can be withdrawn after an interlocutory order only upon a showing of fraud, duress, or intimidation and that, given the showing that she was under no duress at the time she executed the consent, her argument must fail. Gray v. The Gladney Center, 79 Ark. App. 165, 87 S.W.3d 797 (2002).

J. No Jurisdiction

In no event shall a juvenile remain under the court's jurisdiction past 21 years of age. Ark. Code Ann. §9-27-306(a)(2) (Supp. 2007).

II. PETITIONERS, PETITIONS, VENUE & TRANSFERS

A. Petitioners

1. Only a law enforcement officer, prosecuting attorney, or DHHS or its designee can file a dependency-neglect petition seeking ex parte emergency relief. **Ark. Code Ann. § 9-27-310(b)(2) (Supp. 2007).**
2. Any adult or any member 10 years or older of the immediate family alleged in need of services can file a dependency-neglect petition. **Ark. Code Ann. § 9-27-310(b)(3) (Supp. 2007).**
3. A paternity petition can be filed by the:
 - a. Biological mother,
 - b. Putative father,
 - c. Juvenile, or
 - d. Office of Child Support Enforcement (OCSE). **Ark. Code Ann. § 9-27-310(b)(4) (Supp. 2007).**
4. Only DHHS and the attorney ad litem can file petition to terminate parental rights pursuant to the juvenile code. **Ark. Code Ann. § 9-27-341(a)(1)(A) (Supp. 2007).**

B. Defendants

1. All of the following parties named in petition (except paternity petitions) are defendants:
 - a. Juvenile;
 - b. Each of the parents or the surviving parent;
 - c. The person, agency or institution having custody of juvenile;
 - d. Putative and presumed legal father in paternity petition; and
 - e. Putative parent in dependency-neglect petition. **Ark. Code Ann. § 9-27-311(c) (Repl. 2002).**

The trial court erred in denying standing to a putative father where he claimed to be the father and the mother claimed that he was the biological father. Jorden v. State, 73 Ark. App. 1, S.W.3d 914 (2001).

C. Intervention

Where appellees moved to intervene on the day a temporary order finding probable cause for dependency-neglect was entered, which was just over a month after the original petition had been filed, and where appellant did not show that there was any prejudice as a result of the intervention; the juvenile court did not abuse its discretion in finding that the motion was timely.

The timeliness of a motion to intervene is a matter clearly within the trial court's discretion, and it will be reversed only where that discretion has been abused; the factors considered by the appellate court regarding the timeliness of a motion to intervene are: (1) how far the proceedings have progressed; (2) any prejudice to other parties caused by the delay; and (3) the reason for the delay. Under Ark. R. Civ. P. Rule 24(b), intervention may be permitted when the main action and an applicant's claim or defense have a question of law or fact in common; here, the common facts and questions of law involved the proper care and custody of appellant's three sons; as with timeliness, permissive intervention is also a matter within the trial court's discretion, and the appellate court will reverse only for abuse of that discretion. Lowell v. Lowell, 55 Ark. App. 211, 934 S.W.2d 540 (1996).

The Arkansas Supreme Court found that a stepparent had no legal rights to the children; therefore, he could not intervene in proceedings initiated by DHS. The chancellor correctly found that the appellant's divorce from the children's mother rendered moot any interest he might have. Stair v. Phillips, 315 Ark. 429, 867 S.W.2d 453 (1993).

D. Contents of Petition

1. Petition shall include:

- a. Name, address, gender, date of birth and social security number of each juvenile subject to the petition. **Ark. Code Ann. § 9-27-311(a)(1)(A) (Repl. 2002).**

A single petition for dependency-neglect shall be filed which includes all siblings who are subjects of the petition. Ark. Code Ann. § 9-27-311(a)(1)(B) (Repl. 2002).

- b. Name and address of each of the juvenile's parents or surviving parent. **Ark. Code Ann. § 9-27-311(a)(2) (Repl. 2002).**

- c. Name and address of the person, agency or institution having custody of juvenile or having a claim of custody or guardianship of the juvenile. **Ark. Code Ann. § 9-27-311(a)(3-4) (Repl. 2002).**
 - d. Name and address of putative and presumed legal father in petition to establish paternity. **Ark. Code Ann. § 9-27-311(a)(5) (Repl. 2002).**
 - e. The name and address of a putative parent in a dependency-neglect proceeding. **Ark. Code Ann. § 9-27-311(a)(6) (Repl. 2002).**
 - f. Facts which, if proven, would bring juvenile and juvenile's family within court's jurisdiction. **Ark. Code Ann. § 9-27-311(d)(1)(A) (Repl. 2002).**
 - g. Code section upon which jurisdiction is based. **Ark. Code Ann. § 9-27-311(d)(1)(B) (Repl. 2002).**
 - h. Relief requested by petitioner. **Ark. Code Ann. § 9-27-311(d)(1)(C) (Repl. 2002).**
 - i. Sections of criminal laws allegedly violated if delinquency petition. **Ark. Code Ann. § 9-27-311(d)(1)(D) (Repl. 2002).**
- 2. Except in paternity or TPR petitions, a petition shall be supported by an affidavit of facts. **Ark. Code Ann. § 9-27-311(d)(2) (Repl. 2002).**
 - 3. If name or address of anyone listed above cannot be ascertained by petitioner with reasonable diligence, such shall be alleged and petition shall not be dismissed for insufficiency, but the court shall direct appropriate measures to find and give notice to such persons **Ark. Code Ann. § 9-27-311(b) (Repl. 2002).**

E. Filing Petition

- 1. With the court clerk.
- 2. By transfer from another court. **Ark. Code Ann. § 9-27-310(a) (Supp. 2007).**
- 3. No fees, including but not limited to fees for filing, copying, faxing, including petitions for adoptions and guardianships, summons or subpoenas shall be charged or collected by the clerk or sheriff's office for cases filed in the circuit court pursuant to this subchapter by a governmental entity or nonprofit, including but not limited to the PA, AAL in dependency-neglect cases or DHHS. **Ark. Code Ann. § 9-27-310(e) (Supp. 2007).**
- 4. If the clerk's office has a fax machine the clerk shall accept fax transmission of papers filed pursuant to this subchapter as described in Rule 5 of the Arkansas

Rules of Civil Procedure in cases commenced by a governmental entity or nonprofit, including but not limited to the PA, AAL in dependency-neglect cases or DHHS. **Ark. Code Ann. § 9-27-310(f) (Supp. 2007).**

F. Notification

1. Any juvenile defendant age 10 and above and any person having care and control of the juvenile and any adult defendants shall be served with:
 - a. Copy of petition;
 - b. Notice of hearing; and
 - c. Order to appear as provided by Arkansas Rules of Civil Procedure **Ark. Code Ann. § 9-27-312 (Repl. 2002).**

The U.S. Supreme Court held that juvenile and parents or guardian must be notified in writing of specific charges or factual allegations to be considered in hearing and that such notice be given at the earliest practicable time, sufficiently in advance of hearing to permit preparation. In Re Gault, 387 U.S. 1 (1967).

2. Concurrent with the filing of a petition that requests that DHHS take custody or provide services to a juvenile and his/her family, the petitioner shall mail a copy of the petition to the DHHS Director and local OCC attorney. **Ark. Code Ann. § 9-27-310(c) (Supp. 2007).**

G. Venue

1. Juvenile shall be brought before the circuit court in county in which juvenile resides, except the following proceedings may be commenced in county where alleged act or omission occurred in:
 - a. Nonsupport proceedings after paternity is established; or
 - b. Dependency-neglect proceedings. **Ark. Code Ann. § 9-27-307(a)(1-2) (Supp. 2007).**

No dependency-neglect proceeding shall be dismissed if filed in the incorrect county, but it shall be transferred to the proper county upon discovery of the juvenile's residence. **Ark. Code Ann. § 9-27-307(a)(1)(B) (Supp. 2007).**

2. UCCJEA proceedings shall be commenced in court as provided by UCCJEA. **Ark. Code Ann. § 9-27-307(a)(3) (Supp. 2007).**

3. Adoptions and guardianships may be filed in the court which has previously asserted continuing jurisdiction of the juvenile. **Ark. Code Ann. § 9-27-307(a)(4) (Supp. 2007).**
4. Except for detention hearings pursuant to Ark. Code Ann. §9-27-326 and probable cause hearings pursuant to Ark. Code Ann. §9-27-315, circuit judges must have agreement of the parties to hear contested cases outside of the county of venue as required by Ark. Code Ann. §16-13-210. **Ark. Code Ann. § 9-27-307(a)(5) (Supp. 2007).**

H. Case Transfers

1. Following an adjudication the court, on its own motion or any party's motion, may transfer the case to the county of the juvenile's residence if the UCCJEA does not apply. **Ark. Code Ann. § 9-27-307(b)(1) (Supp. 2007).**
2. The court shall not transfer any case where a TPR petition has been filed unless the court has taken final action on the petition. **Ark. Code Ann. § 9-27-307(b)(2) (Supp. 2007).**
3. Prior to transferring a case to another venue, the court shall contact the judge to confirm that the judge will accept the case and upon confirmation that the judge will accept the case, the transferring judge shall enter a transfer order that shall:
 - a. indicate that the judge has accepted the transfer;
 - b. state the locate of the court in the new venue; and
 - c. set the date and time of the next hearing. **Ark. Code Ann. § 9-27-307(c)(1-2) (Supp. 2007).**
4. The transfer order shall be provided to all parties in the case and shall be transmitted immediately to the judge accepting the transfer along with copies of the court records. **Ark. Code Ann. § 9-27-307(c)(2-3) (Supp. 2007).**

JUDGES' EMERGENCY EX PARTE ORDER CHECKLIST

A.C.A. §9-27-314

Purpose:

① When there is probable cause to believe that immediate emergency custody is necessary to protect the health or physical well-being of the juvenile from immediate danger or prevent the juvenile's removal from the state the court shall issue an emergency ex parte order to remove the juvenile and determine an appropriate placement plan. A.C.A. §9-27-314(a)(1)

② To provide specific appropriate safeguards to protect the juvenile when there is probable cause to believe an emergency order is necessary to protect the juvenile from severe maltreatment, if the alleged offender has a legal right to custody or visitation with the juvenile, has a property right allowing access to the home where the juvenile resides, or is a juvenile. A.C.A. §9-27-314(a)(2)

Severe maltreatment means sexual abuse, sexual exploitation, acts or omissions which may result in death abuse involving the use of a deadly weapon, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in behavior or demeanor of the child. A.C.A. §12-15-503(16)

③ When there is probable cause to believe that a juvenile is dependent, the court shall issue an ex parte order for emergency custody to DHS. A.C.A. §9-27-314(a)(2)

Dependent juvenile means:

- A child of a parent in DHS custody;
- A child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child;
- A child whose parent or guardian is incapacitated so they cannot care for the juvenile and they have no appropriate relative or friend to care for the child;

- A child whose custodial parent dies and no stand-by guardian exists;
- A child who is an infant relinquished to the custody of DHS for the sole purpose of adoption;
- A safe-haven baby; or
- A child who has disrupted his/her adoption and the adoptive parents have exhausted resources available to them. A.C.A. § 9-27-314(a)(3)

Time Constraints:

⌚ The Probable Cause Hearing shall be held within five business days of the issuance of the ex parte order. A.C.A. § 9-27-315(a)(1)(A)

Filing:

Only a law enforcement officer, prosecuting attorney or DHS or its designee can file a dependency-neglect petition seeking ex parte relief. A.C.A. 9-27-310(b)(2)

Notice:

Immediate notice of the order shall be given by the petitioner or court to parents, guardians or custodians and service shall be in accordance with Arkansas Rules of Procedure. A.C.A. § 9-27-314(c)(1)

JUDGES' EMERGENCY EX PARTE ORDER CHECKLIST

Petition Shall Include:

- Name, address, gender, social security number, and date of birth of each juvenile subject of the petition.
- Name and address of each of the parents or the surviving parent of the juveniles.
- Name and address of the person, agency, or institution having custody of the juveniles.
- Name and address of any other person, agency or institution having a claim to custody or guardianship of the juveniles.
- Name and address of a putative parent, if any.
- Petition shall set forth, in plain and concise words, facts which, if proven, would bring the family or juvenile within court's jurisdiction; section of the subchapter upon which jurisdiction is based; and relief requested.
- Petition shall be supported by an affidavit.
- If name or address is unknown or cannot be ascertained with reasonable diligence, allege such in petition and petition shall not be dismissed for insufficiency but court shall direct appropriate measures to find and give notice to the persons.
- Single petition shall be filed which includes all siblings who are subjects of the petition. A.C.A. §9-27-311.

Emergency Order Shall Include:

- ① Notice to juvenile's parents, custodian, or guardian of the right to a hearing and that a hearing will be held within 5 business days of issuance of ex parte order;
- ② Right of parent, guardian, or custodian from whom custody was removed to be represented by counsel and to appointed counsel if indigent, and how to obtain counsel

Best Practice: *Appoint parent counsel in the emergency ex parte order and determine request and indigency at PC Hearing.*

Court may appoint counsel for parent or guardian from whom custody was removed in the ex parte emergency order. A.C.A. §9-27-316 (h)(1)(B)

- ③ Appointment of attorney ad litem for child; and A.C.A. § 9-27-316(f)(1)

- ④ Information regarding hearing or location and telephone number of the court and procedure for obtaining a hearing. A.C.A. §9-27-314 (b)(4)

⑥ REQUIRED IV-E FINDING

In the initial order placing a child in DHS, the Court must make a finding on whether:

- * "it is contrary to the juvenile's welfare to remain with the parent/guardian/custodian"
- * immediate removal and the reasons for removal are "necessary to protect the health and safety of juvenile;" and
- * That removal is in the juvenile's best interest. A.C.A. §9-27-328(b)(1)

Where the state's first contact with the family has occurred during an emergency in which the juvenile could not remain safely in the home even with reasonable efforts being provided, reasonable efforts shall be deemed. A.C.A. §9-27-328(c)

Best Practice: *Set Probable Cause Hearing for specific date and time and order parties to be present. Have background information affidavit and indigency affidavit attached to emergency ex parte order and develop system in Judicial Circuit of who is responsible for ensuring that information is completed prior to the Probable Cause Hearing so that it can be introduced into evidence at the Probable Cause Hearing.*

III. EMERGENCY EX PARTE ORDERS

A. Ex Parte Order

1. Court shall issue an ex parte order to remove the juvenile from the custody of the parent, guardian, or custodian when probable cause exists that immediate emergency custody is necessary to:
 - a. Protect the juvenile's health or physical well-being from immediate danger; or
 - b. Prevent juvenile's removal from state. **Ark. Code Ann. §9-27-314(a)(1) (Supp. 2007).**
2. Court shall issue an ex parte order to provide specific appropriate safeguards to protect the juvenile from severe maltreatment if the alleged offender has a legal right to custody or visitation with juvenile or a property right allowing access to the home where the juvenile resides. **Ark. Code Ann. §9-27-314(a)(2) (Supp. 2007).**

Severe Maltreatment means sexual abuse, sexual exploitation, acts or omissions which may or do result in death, abuse involving the use of a deadly weapon as defined by the Ark. Criminal Code § 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive or causing substantial and observable change in the behavior or demeanor of the child. **Ark. Code Ann. §12-12-503(16) (Supp. 2007).**

3. The court shall issue an emergency ex parte order for emergency custody placing the juvenile with DHHS when there is probable cause to believe that a juvenile is dependent. **Ark. Code Ann. §9-27-314(a)(3) (Supp. 2007).**
 - a. **Dependent juvenile** means:
 - (1) A child of a parent under 18 and in DHS custody;
 - (2) A child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child;
 - (3) A child whose parent or guardian is incapacitated so they cannot care for the juvenile and they have no appropriate relative or friend to care for the child;

- (4) A child whose custodial parent dies and no stand-by guardian exists;
- (5) A child who is an infant relinquished to the custody of DHS for the sole purpose of adoption;
- (6) A safe-haven baby; or
- (7) A child who has disrupted his/her adoption and the adoptive parents have exhausted resources available to them. **A.C.A. §9-27-303(17) (Supp. 2007).**

2. Purpose of ex parte order for emergency custody is to:

- a. Remove the juvenile from custody of parent, guardian and/or to protect the juvenile;
- b. To determine an appropriate plan for the juvenile's placement. **Ark. Code Ann. §-27-314(a) (Supp. 2007).**

B. Ex Parte Order Notice

- 1. The order shall include notice to that parent, custodian or guardian of the:
 - a. Right to hearing and procedure for obtaining hearing within 5 business days of issuance of ex parte order;
 - b. Right to representation by counsel;
 - c. Right to appointed counsel if indigent and procedure for obtaining appointed counsel; and
 - d. Location and telephone number of court. **Ark. Code Ann. §9-27-314(b) (Supp. 2007).**
- 2. Immediate notice of order shall be given to juvenile's parents, guardians, or custodian by petitioner or court. **Ark. Code Ann. §9-27-314(c)(1) (Supp. 2007).**
- 3. All defendants shall be served according to Arkansas Rules of Civil Procedure or as otherwise provided by court. **Ark. Code Ann. §9-27-314(c)(2) (Supp. 2007).**

C. Appointment of Parent Counsel

The court may appoint counsel for the parent or guardian for whom custody was removed in the emergency ex parte order. **Ark. Code Ann. §9-27-316(h)(1)(B) (Supp. 2007).**

The state only pays for parent counsel for parents or guardians from whom custody is removed and at, or prior to, a termination of parental rights hearing if the parent or guardian qualifies in dependency-neglect proceedings. If the court appoints counsel in the emergency ex parte order, the court shall determine the request for counsel and indigency at the Probable Cause Hearing. Counsel shall be paid contingent on the reimbursement guidelines and an indigency affidavit considered and filed with the court. **Ark. Code Ann. § 9-27-316(h) (Supp. 2007); § 9-27-401(Supp. 2007).**

D. Appointment of Attorney Ad Litem

The Court shall appoint an attorney ad litem to represent the best interest of the juvenile when an emergency ex parte order is entered in a dependency-neglect case. **Ark. Code Ann. §9-27-316(f)(1) (Supp. 2007).**

E. Federal IV-E Findings Required

1. In the initial order of removal the court must find:
 - a. Whether it is contrary to the welfare of the juvenile to remain at home;
 - b. Whether removal and the reasons for removal is necessary to protect the health and safety of the juvenile; and
 - c. Whether removal is in the best interest of the juvenile. **Ark. Code Ann. §9-27-328(b) (Supp. 2007).**

IV. RIGHT TO COUNSEL

A. Alleged Dependent Neglected Juveniles' Right to Counsel

1. The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Arkansas Supreme Court to represent the best interest of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier. **Ark. Code Ann. § 9-27-316(f)(1) (Supp. 2007); Supreme Court Administrative Order No. 15.**
2. The court may appoint an attorney ad litem to represent the best interest of a juvenile involved in any case before the court and shall consider the juvenile's best interest in determining whether to appoint an attorney ad litem. **Ark. Code Ann. § 9-27-316(f)(2) (Supp. 2007).**
3. Each attorney ad litem shall:
 - a. File written motions, responses or objections at all stages of the proceedings when necessary to protect the best interest of the juvenile;
 - b. Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and
 - c. Present witnesses and exhibits when necessary to protect the juvenile's best interest. **Ark. Code Ann. § 9-27-316(f)(3) (Supp. 2007).**
4. An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including but not limited to:
 - a. school records,
 - b. medical records,
 - c. juvenile court records, and
 - d. DHHS records, to the extent permitted by federal law. **Ark. Code Ann. § 9-27-316(f)(4) (Supp. 2007).**
5. If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his determination of the juvenile's best interest. **Ark. Code Ann. § 9-27-316(f)(5) (Supp. 2007).**

B. Court Appointed Special Advocate (CASA)

1. The court may appoint a volunteer CASA from a program which shall meet all state and national CASA standards to advocate for juveniles in dependency-neglect proceedings. **Ark. Code Ann. § 9-27-316(g)(1) (Supp. 2007).**
2. No CASA shall be assigned a case before:
 - a. Completing a training program in compliance with national and state standards; and
 - b. Being approved by the local CASA program which will include appropriate criminal background and child abuse registry checks. **Ark. Code Ann. § 9-27-316(g)(2) (Supp. 2007).**
2. Each CASA shall:
 - a. Investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem or through court testimony and court reports.
 - (1) The CASA may testify if called as a witness.
 - (2) When the CASA prepares a written report for the court, the advocate shall provide all parties with a copy of the written report seven business days prior to the relevant hearing.
 - b. Monitor the case to which he/she is assigned to ensure compliance with the court's orders.
 - c. Assist the attorney ad litem in representing the juvenile's best interest. **Ark. Code Ann. § 9-27-316(g)(3) (Supp. 2007).**
4. Upon presentation of an order of appointment, a CASA shall be provided access to all records relevant to the juvenile's case, including but not limited to:
 - a. school records,
 - b. medical records,
 - c. juvenile court records, and
 - d. DHHS records, to the extent permitted by federal law. **Ark. Code Ann. § 9-27-316(g)(4) (Supp. 2007).**
5. A CASA is not a party to the case to which he or she is assigned and shall not call witnesses or examine witnesses. **Ark. Code Ann. § 9-27-316(g)(5) (Supp. 2007).**

6. A CASA shall not be liable for damages for personal injury or property damage, pursuant to Ark. Code Ann. §16-6-1010 -105. **Ark. Code Ann. § 9-27-316(g)(6) (Supp. 2007).**
7. Except as provided by this subsection, a CASA shall not disclose any confidential information or reports to anyone except as ordered by the court or otherwise provided by law. **Ark. Code Ann. § 9-27-316(g)(7) (Supp. 2007).**

C. Parent's and Guardian's Right to Counsel

1. Parents and guardians have a right to counsel in all proceedings to remove custody from a parent or guardian or to terminate parental rights.
 - a. A parent or guardian shall be advised in the dependency-neglect petition or ex parte emergency order and at their first appearance before the court of right to counsel at all stages of the proceedings and the right to appointed counsel if indigent. **Ark. Code Ann. § 9-27-316(h)(1)(A) (Supp. 2007).**
 - b. A court may appoint counsel for the parent or guardian from whom custody was removed in the ex parte emergency order. **Ark. Code Ann. § 9-27-316(h)(1)(B) (Supp. 2007).**
2. Court shall appoint counsel in all proceedings to remove custody to terminate parental rights:
 - a. Upon parent or guardian's request, and
 - b. Court's determination of indigency. **Ark. Code Ann. § 9-27-316(h)(2) (Supp. 2007).**
 - (1) No payment for attorney fees for a court proceeding for indigent parents or guardians shall be authorized unless an affidavit of indigence is completed and filed with the clerk of the court. **Ark. Code Ann. § 9-27-316(h)(2)(C) (Supp. 2007).**
 - (2) If the court terminates parental rights, no payment for attorneys fees for appeals for indigent parents will authorized unless a new affidavit of indigence is completed and filed with the clerk and a re-determination of indigence hearing is held. **Ark. Code Ann. § 9-27-316(h)(2)(B) (Supp. 2007).**
3. Appointment of counsel shall be made sufficiently in advance of court appearance to allow adequate preparation and consultation with client. **Ark. Code Ann. § 9-27-316(h)(4) (Supp. 2007).**

3. Appointment of counsel shall be made sufficiently in advance of court appearance to allow adequate preparation and consultation with client. **Ark. Code Ann. § 9-27-316(h)(4) (Supp. 2007).**
4. Court shall order financially able parents or guardians to pay all or part of reasonable attorney's fees and expenses for court-appointed representation of the parent or guardian:
 - a. Following a review by the court of an affidavit of financial means completed and verified by the parent, and
 - b. Determination by the court of an ability to pay. **Ark. Code Ann. § 9-27-316(h)(3) (Supp. 2007).**
5. The parent or guardian's attorney shall be provided access to all relevant records, including but not limited to:
 - a. school records,
 - c. medical records,
 - d. juvenile court records, and
 - e. DHHS records to which they are entitled under state and federal law. **Ark. Code Ann. § 9-27-316(h)(5) (Supp. 2007).**
6. Parent Waiver of Counsel

TPR reversed because trial judge erred in finding that appellant had waived her right to counsel. In order to establish a voluntary and intelligent waiver, the judge must:

① *Explain the desirability of having the assistance of counsel; and,*

② *Advise the parent of the drawbacks and disadvantages of self-representation so that the record will establish that he/she knows what he/she is doing and that he/she has made the choice with his/her eyes wide open. Battishill v. Arkansas Dep't of Human Servs., 78 Ark. App. 68, 82 S.W.3d 178 (2002).*

The Arkansas Supreme Court reversed the Court of Appeals and held that appellant's request to waive counsel was not unequivocal and, therefore, it would have been error for the trial court to accept that waiver, because her request did not satisfy constitutional standards for the waiver of counsel.

Waiver of counsel valid only if:

- ① *Request is unequivocal and timely asserted;*
- ② *There has been a knowing and intelligent waiver of the right to counsel; and,*
- ③ *The defendant has not engaged in conduct that would prevent the fair and orderly exposition of the issues. Bearden v. Arkansas Dep't of Human Servs., 344 Ark. 317, 42 S.W.3d 397 (2001).*

D. Juvenile Court Representation Fund

1. All money collected by the clerk for representation in all proceedings to remove custody from a parent or guardian or to terminate parental rights pursuant to Ark. Code Ann. §9-27-316(b)(2) and (h)(3) shall be placed in this fund. **Ark. Code Ann. § 9-27-316(b)(2)(Supp. 2005); Ark. Code Ann. § 9-27-316(h)(3) (Supp. 2007).**
2. Court may direct that money from this fund be used to provide counsel for indigent parents or guardians in dependency-neglect cases as provided in Ark. Code Ann § 9-27-316(h)(Supp. 2005). **Ark. Code Ann. § 9-27-316(b)(4) (Supp. 2005); Ark. Code Ann. § 9-27-316(h)(3)(B)(i) (Supp. 2007).**
3. Money remaining in fund at end of fiscal year shall not revert to any other fund but shall carry over to next fiscal year. **Ark. Code Ann. § 9-27-316(b)(5) (Supp. 2007).**
4. Upon a determination of indigency and a finding by the court that the fund does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and that state funds have been exhausted, the court may order the county to pay such reasonable fees and expenses, until the state provides funding for such counsel. **Ark. Code Ann. § 9-27-316(h)(3)(iii) (Supp. 2007).**
5. The state only pays for parent counsel for parents or guardians from whom custody is removed and at, or prior to, a termination of parental rights hearing if the parent or guardian qualifies in dependency-neglect proceedings. If the court appoints counsel in the emergency ex parte order, the court shall determine the request for counsel and indigency at the Probable Cause Hearing. Counsel shall be paid contingent on the reimbursement guidelines and an indigency affidavit considered and filed with the court. **Ark. Code Ann. § 9-27-316(h) (Supp. 2007); § 9-27-401(Supp. 2007).**

V. CASE PLANS

A. Development

1. A case plan shall be developed in:
 - a. All dependency-neglect cases; and
 - b. Any case involving an out-of-home placement. **Ark. Code Ann. §9-27-402(a) (Repl. 2002).**
2. DHS shall be responsible for developing case plans in all dependency-neglect cases, and in FINS or delinquency cases when custody is transferred to the agency, pursuant to Ark. Code Ann. §9-27-328. **Ark. Code Ann. §9-27-402(a) (Repl. 2002).**
3. The case plan shall be developed in consultation with the:
 - a. Juvenile's parent, guardian, or custodian;
 - (1) If the parents are unwilling or unable to participate in the development of the case plan, the department shall document that unwillingness or inability and provide this written documentation to the parent, if available.
 - (2) A parent's incarceration, by itself, does not make a parent unavailable to participate in the development of a case plan.
 - b. Juvenile, if appropriate;
 - c. Juvenile's foster parents;
 - d. CASA, if appointed to case;
 - e. Juvenile's attorney ad litem; and
 - f. All parties' attorney(s). **Ark. Code Ann. §9-27-402(a)(1)(A) (Repl. 2002).**

B. Filed with Court

1. The case plan shall be developed and filed with the court no later than 30 days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner. **Ark. Code Ann. §9-27-402(a)(2)(A) (Repl. 2002).**

2. If DHS does not have sufficient information prior to the adjudication hearing to complete all of the case plan, it shall complete those parts for which information is available. **Ark. Code Ann. §9-27-402(a)(2)(B) (Repl. 2002).**
3. All parts of the case plan shall be completed and filed with the court 30 days after the adjudication hearing. **Ark. Code Ann. §9-27-402(a)(2)(C) (Repl. 2002).**

C. Signed and Distribution

Case plans shall be signed and distributed to all parties and distributed to the juvenile's attorney ad litem, CASA, if appointed, and foster parents, if available. **Ark. Code Ann. §9-27-402(a)(3) (Repl. 2002).**

D. Modifications

1. Case plans shall be subject to modification based on changing circumstances. **Ark. Code Ann. §9-27-402(a)(4)(A) (Repl. 2002).**
2. All parties to the case plan shall be notified of any substantive change to the case plan. **Ark. Code Ann. §9-27-402(a)(4)(B) (Repl. 2002).**
3. A substantive change to a case plan includes, but is not limited to changes:
 - a. in juvenile's placement;
 - b. in the visitation rights of any party; or
 - c. in the goal of the plan. **Ark. Code Ann. §9-27-402(a)(4)(C) (Repl. 2002).**

E. Case Plan Contents for In-Home Services

1. The case plan shall include at a minimum:
 - a. A description of the problems being addressed;
 - b. A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;
 - c. A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to services;

- d. The name of an individual known to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined; and
- e. A description of how the juvenile's health and safety will be addressed.
Ark. Code Ann. §9-27-402(b) (Repl. 2002).

F. Case Plan Contents for Out-of-Home Placement Services

- 1. The case plan must include at a minimum:
 - a. A description of the problems being addressed;
 - b. A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;
 - c. A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to services;
 - d. The name of an individual known to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined;
 - e. A description of the permanency goal;
 - f. The specific reasons for the placement of the juvenile in care outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian which necessitated removal of the juvenile, and the remediation of which will determine the return of the juvenile to the home;
 - g. A description of the type of out-of-home placement selected for the juvenile including a discussion of the appropriateness of the placement;
 - h. A plan for addressing the needs of the juvenile while the placement, with an emphasis on the health and safety safeguards in place for the child, including a discussion of the services provided within the last six (6) months;
 - i. The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the period during which the actions are to be taken;

The plan may include any person or agency who shall agree to and be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile.

- j. The visitation rights and obligations of the parent, guardian, or custodian and the state agency during the period the juvenile is in the out-of-home placement;
- k. The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during the period the juvenile is in placement and a timetable for the provision of those services;

The purposes of services shall be to promote the availability to the juvenile of a continuous and stable living environment, promote family autonomy, strengthen family life where possible, and promote the reunification of the juvenile with the parent, guardian or custodian.

- l. To the extent available and accessible, the health and education records of the juvenile, pursuant to 42 U.S.C. 675(1);
- m. A description of the financial support obligation to the juvenile, including health insurance of the juvenile's parent, parents, or guardian;
- n. A description of the location of siblings. If siblings have been separated, a statement of the reasons for separation and the efforts that have been and will be made to enable the siblings to maintain regular contact while separated and to be reunited as soon as possible;
- o. When appropriate for a juvenile age sixteen (16) and over, the case plan must also include a written description of the programs and services which will help the juvenile prepare for the transition from foster care to independent living; and
- p. A written notice to the parent(s) that failure of the parent(s) to comply substantially with the case plan may result in the termination of parental rights, and that a material failure to comply substantially may result in the filing of a petition for termination of parental rights sooner than the compliance periods set forth in the case plan itself. **Ark. Code Ann. §9-27-402(c) (Repl. 2002).**

G. Court Approval Required

The case plan is subject to court review and approval. **Ark. Code Ann. §9-27-402(d) (Repl. 2002).**

H. Participation Not Admission

A parent's, guardian's or custodian's participation in the development or the acceptance of a case plan shall not constitute an admission of dependency-neglect. **Ark. Code Ann. §9-27-402(e) (Repl. 2002).**

VI. HEARINGS GENERALLY

A. Notice

1. Contents of notice
 - a. Describes the nature of hearing; and
 - b. Indicates time, date and place of hearing; and
 - c. Advises of right to counsel and appointed counsel if indigent. **Ark. Code Ann. § 9-27-303(37)(A) (Supp. 2007).**
2. Notice shall be served in manner provided by the Ark. R. Civ. P. 5. **Ark. Code Ann. § 9-27-303(37)(B) (Supp. 2007).**
3. DHS shall provide notice of any review or hearing to foster parents and pre-adoptive parents of a child in DHS custody. **Ark. Code Ann. § 9-27-325(l)(l) (Supp. 2007).**
4. Relative care givers shall be given notice by the original petitioner in the juvenile matter. **Ark. Code Ann. § 9-27-325(l)(2) (Supp. 2007).**
5. Foster parents adoptive parents, and relative care givers shall not be made parties to the review or hearing solely on the basis of their right to notice and the opportunity to be heard. **Ark. Code Ann. § 9-27-325(l)(3)(B) (Supp. 2007).**
6. A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve months of age or younger when:
 - a. The grandchild resides with this grandparent for at least six continuous months prior to his or her first birthday;
 - b. The grandparent was the primary care giver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent;
 - c. The continuous custody occurred within one year of the date the child custody proceeding was initiated; and
 - d. Notice to a grandparent under this subsection shall be given by DHS. **Ark. Code Ann. § 9-27-325(l)(3)(B)(m)(1)(A) (Supp. 2007).**

- a. Grandchild resides with this grandparent for at least one continuous year regardless of age;
- b. Grandparent was the primary care giver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and
- c. Continuous custody occurred within one year of the date the child custody proceeding was initiated. **Ark. Code Ann. § 9-27-325(l)(3)(B)(m)(1)(B) (Supp. 2007).**

For purposes of this subsection, "grandparent" does not mean a parent of a putative father of the child. **Ark. Code Ann. § 9-27-325(l)(3)(B)(m)(2) (Supp. 2005).**

B. Pleadings & Notice of Appearance

- 1. Defendants not required to file written responsive pleading in order to be heard by court. **Ark. Code Ann. § 9-27-325(b)(1) (Supp. 2007).**
- 2. In dependency-neglect procedures, retained counsel shall file a notice of appearance upon acceptance of representation and serve a copy to the petitioner. **Ark. Code Ann. § 9-27-325(b)(2) (Supp. 2007).**

C. Defendants & Witnesses

- 1. At the time set for the hearing, the court may:
 - a. Proceed only if juvenile is present or excused for good cause; or
 - b. Continue the case upon determination that presence of an adult defendant is necessary. **Ark. Code Ann. § 9-27-325(c)(1) (Supp. 2007).**
- 2. After determination that a necessary party is not present, the court may issue:
 - a. Contempt order if juvenile was served with notice to appear, or
 - b. Order to appear with time and place of hearing if juvenile was served with notice of hearing. **Ark. Code Ann. § 9-27-325(c)(2) (Supp. 2007).**
- 3. All parties shall have the right to compel attendance of witnesses in accordance with the Arkansas Rules of Civil Procedure. **Ark. Code Ann. § 9-27-325(g) (Supp. 2007).**

D. Court of Record

1. Records of proceedings shall be kept in accordance with rules promulgated by the Arkansas Supreme Court. **Ark. Code Ann. § 9-27-325(d) (Supp. 2007).**
2. Unless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings pertaining to any contested matter before it. **Supreme Court Administrative Order Number 4.**

E. Rules

1. Unless otherwise indicated, the Arkansas Rules of Evidence apply. **Ark. Code Ann. § 9-27-325(e) (Supp. 2007).**

Note: Ark. Code Ann. § 9-27-315(e) provide that probable cause hearings are miscellaneous hearings and the Rules of Evidence are not applicable.

2. The Rules of Civil Procedure shall apply to all proceedings. **Ark. Code Ann. § 9-27-325(f) (Supp. 2007).**

F. Burden of Proof

1. Preponderance of the evidence applies to all dependency-neglect hearings except for TPR and No-Reunification Services: **Ark. Code Ann. § 9-27-325(h)(2)(C) (Supp. 2007).**
2. Clear and convincing evidence applies to the following hearings
 - a. Termination of Parental Rights (TPR); **Ark. Code Ann. § 9-27-325(h)(2)(C) (Supp. 2007).**
 - b. No Reunification Services; and **Ark. Code Ann. § 9-27-325(h)(2)(C) (Supp. 2007); Ark. Code Ann. § 9-27-303(46)(C) (Supp. 2007); Ark. Code Ann. § 9-27-327(a)(2)(B)(ii) (Supp. 2007); Ark. Code Ann. § 9-27-329(c)(5)(B) (Supp. 2007).**

G. Closed Hearings

1. Court has discretion to conduct closed hearings except:
 - a. Adoption hearings shall be closed as provided in the revised Uniform Adoption Act.

- b. All hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed. **Ark. Code Ann. § 9-27-325(i) (Supp. 2007).**

H. Foster and Pre-adoptive Parents' and Relative Caregivers' Rights

1. DHS shall provide notice of any review or hearing with respect to a child in their care.
2. Court shall provide opportunity for foster parents, pre-adoptive parents, and relative caregivers to be heard in any proceeding held with respect to a child in their care. They have a right to be heard.
3. Foster parents and pre-adoptive parents shall not be made parties solely on the basis of their right to notice and the opportunity to be heard. **Ark. Code Ann. § 9-27-325(l) (Supp. 2007).**

I. 72-Hour Hold

A juvenile division of circuit court judge during juvenile proceedings concerning the child or siblings of the child may take a child into protective custody if:

1. The child is dependent-neglected as defined by **Ark. Code Ann. § 9-27-303(18) (Supp. 2007);**
2. The child is dependent as defined by **Ark. Code Ann. § 9-27-303(17) (Supp. 2007);** or
3. Circumstances or conditions of the child are such that continuing in his/her place of residence or in the care and custody of the parent, guardian or custodian or caretaker presents an immediate danger of severe maltreatment. **Ark. Code Ann. § 12-12-516(a) (Supp. 2007).**

Severe Maltreatment means sexual abuse, sexual exploitation, acts or omissions which may or do result in death, abuse involving the use of a deadly weapon as defined by the Arkansas Criminal Code § 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive or causing substantial and observable change in the behavior or demeanor of the child. **Ark. Code Ann. § 12-12-503(16) (Supp. 2007).**

J. Admissibility of Evidence

1. Home Studies

The Court held that the trial court did not abuse its discretion in refusing to admit a Colorado home study into evidence in absence of someone who could be cross-examined as to its contents. Arkansas Dep't of Human Servs. v. Huff, 347 Ark. 553, 655 S.W.3d 880 (2002).

2. Drug Testing

- a. Upon motion of any party the court may order the father, mother or child to submit to scientific testing for drug or alcohol abuse. **Ark. Code Ann. § 9-27-325(e)(2)(A) (Supp. 2007).**
- b. A written report of the test results prepared by the person conducting the test or under whose supervision or direction the test was performed, certified by an affidavit before a notary public may be introduced evidence without calling the witness unless a motion challenging the test procedures or results has been filed within 30 days before the hearing and bond is posted to cover cost of the person's appearance to testify. **Ark. Code Ann. § 9-27-325(e)(2)(B) (Supp. 2007).**
- c. If contested, documentation of the chain of custody of samples taken from test subjects shall be verified by affidavit of one person witnessing the procedure or extraction, packaging and mailing of samples and one person signing for the samples where the samples are subject to testing procedures. Submission of these affidavits with test results shall be competent evidence to establish chain of custody of specimens. **Ark. Code Ann. § 9-27-325(e)(2)(C) (Supp. 2007).**
- d. If a party refuses court ordered scientific testing for drug or alcohol abuse, that refusal shall be disclosed at trial and may be considered civil contempt of court. **Ark. Code Ann. § 9-27-325(e)(2)(D) (Supp. 2007).**

K. Interstate Compact Placement of Children (ICPC)

In response to *Arkansas Dep't of Human Servs. v Huff*, 347 Ark. 553, 655 S.W.3d 880 (2002), Act 1309 of 2003 was amended in Senate Judiciary to amend the ICPC.

2. **Placement** means the arrangement for care of a child in the home of his/her parent, other relative, or non-agency guardian in a receiving state. . . . **Ark. Code Ann. § 9-27-201, Article II (d)(2) (Supp. 2007).**

3. **Priority placement** was added and means whenever a court, upon request or on its own motion or where court approval is required, determines that a proposed priority placement of a child from 1 state into another state is necessary because:
- a. the child is under two;
 - b. the child is in an emergency shelter;
 - c. or the court finds that the child has spent a substantial time in the home of the proposed placement recipient.

The state agency has 30 days to complete a request for a priority placement. Request for placement shall not be expedited or given priority except as outlined in this subsection. **Ark. Code Ann. § 9-27-201, Article II (f) (Supp. 2007).**

4. **Judicial Review:** It also provides that if the home study is denied, the sending state shall present the study to the judge who shall review the study and make specific findings of fact regarding the concerns outlined in the home study. If the court finds that the health and safety concerns cannot be addressed or cured by services, the court will not make the placement. **Ark. Code Ann. § 9-27-201, Article IV (e) (Supp. 2007).**

At a probable cause hearing the AAL recommended that the child be returned to the home of the paternal grandparents. OCC objected and requested a home study pursuant to ICPC, but stated when asked by the judge that the only services DCFS would offer the mother would be parenting classes. DHHS argued that the court abused its discretion by not complying with ICPC. The Court stated that the Arkansas Supreme Court made it clear in Huff that ICPC is limited to placement of a child in foster care or dispositions preliminary to adoption. DHHS argued that amendments to ICPC post Huff to the definition of foster care to include a child parent(s) or relative had remedied Huff. The Court stated that the new definition makes it clear that whether a situation is considered foster care depends not upon the relationship of the care giver, but upon the reason for the placement. The circuit court did not place the child in foster care with anyone, it restored custody and ICPC does not apply. Arkansas Dep't of Human Servs. v. Jones, 97Ark. App. 267, ___ S.W. 3d (2007).

The Court found that ICPC was intended to govern the placement of children in substitute arrangements for parental care, such as foster care or adoption. ICPC does not apply when a child is returned by the sending state to a natural parent residing in another state. Arkansas Dep't of Human Servs. v. Huff, 347 Ark. 553, 655 S.W.3d 880 (2002).

L. Mediation

1. The court may order any juvenile case or controversy pending before it to mediation. **Ark. Code Ann. § 16-7-202(b) (Supp. 2007).**
2. If the court orders mediation the parties may:
 - a. choose an appropriate mediator from the Arkansas Alternative Dispute Resolution Commission roster (a mediator who meets the commission's requirements for that type of case); or
 - b. select a mediator not on the commission's roster IF approved by the court. **Ark. Code Ann. § 16-7-202(c)(2) (Supp. 2007).**
3. A party may move to dispense with the order to mediate for good cause shown, which may include but is not limited to, a party's inability to pay for the costs of mediation. **Ark. Code Ann. § 16-7-202(d) (Supp. 2002).**
4. A communication relating to the subject matter of any dispute made by a participant in a dispute resolution process, whether before or after the institution of formal judicial proceedings, is confidential and is not subject to disclosure and may not be used as evidence against a participant in any judicial or administrative proceeding except when it conflicts with other legal requirements for disclosure of communications or materials. **Ark. Code Ann. § 16-7-206(a) (Repl. 2002).**

The issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure. **Ark. Code Ann. § 16-7-206(c) (Repl. 2002).**
5. Any record or writing made at a dispute resolution process is confidential, and the participants or third party or parties facilitating the process shall not be required to testify in any proceedings related to or arising out of the matter in dispute or be subject to process requiring disclosure or production of information or data relating to or arising out of the matter in dispute. **Ark. Code Ann. § 16-7-206(b) (Repl. 2002).**
6. Resource – to schedule a dependency-neglect mediation paid for by Court Improvement Program grant funds contact:

Terry A. Harrison, Mediation Office Administrator
Arkansas Dependency & Neglect Mediation Project
U.A.L.R. Bowen School of Law
Phone: (501) 324-9939 Fax: (501) 324-9911
taharrison@ualr.edu

JUDGES' PROBABLE CAUSE HEARING CHECKLIST

A.C.A. §9-27-315

Purpose:

This hearing shall be limited to determining whether probable cause existed to protect the juvenile and to determine if probable cause to protect the juvenile continues to exist; however, issues of custody and services may be considered by the court. A.C.A. §9-27-315(a)(1)(B)

Time constraints:

- ⊗ The Probable Cause Hearing shall be held within five business days of the issuance of the ex parte order. A.C.A. §9-27-315(a)(1)(A)
- ⊗ By agreement of the parties and with the court's approval, the Adjudication Hearing can be held anytime after the Probable Cause hearing. However, the Adjudication Hearing shall be held within 30 days of the Probable Cause Hearing and may be continued for no more than 30 days upon motion of the court or parties for good cause shown. A.C.A. §9-27-315(a)(2)(B) and §9-27-327(a)(1)(A)
- ⊗ A written order shall be filed by the court or by a party or party's attorney as designated by the court within 30 days of the date of the Probable Cause Hearing, or prior to the next hearing, whichever is sooner. A.C.A. §9-27-327(c)(3)

Present At Hearing:

- ✓ Judge
- ✓ All parties, including children, unless excused for good cause by court
- ✓ Attorneys for all parties and the CASA volunteer, if appointed
- ✓ Foster parents and relative caregivers
- ✓ Assigned investigator and/or caseworker
- ✓ Court Reporter

Best Practice: Judge should explain the purpose of the hearing at the beginning and ensure that all parties are identified and witnesses sworn on the record. Judge should ensure that all parties entitled to counsel have counsel or that counsel is properly waived.

Burden of Proof:

Petitioner has proof of preponderance of the evidence that probable cause exists for continuation of the emergency order. A.C.A. §9-27-315(b)

Issues:

- ✓ Have all parties been identified, including putative fathers?
- ✓ Do all parties entitled to counsel, have counsel? Custodial parents and guardians must request counsel and be indigent! – Review indigency affidavit.
- ✓ What is the legal status of the parties to the children?
- ✓ Did foster parents or relative caregivers receive notification of hearing?
- ✓ Is the child of Native American heritage? If so, see ICWA checklist.
- ✓ Probable cause
 - Did it exist to protect the child?
 - Does it continue to exist?
- ✓ What services need to be addressed prior to the adjudication?
- ✓ Custody
- ✓ Visitation for parents and siblings, if separated?
- ✓ Are there relatives for whom a home study should be initiated for possible placement?

Best Practice: Have party introduce into evidence Affidavit Regarding Background Information and Indigency Affidavit.

Court Findings:

- ① That probable cause existed;
- ② That probable cause continues to exist and the juvenile cannot be returned home OR return the juvenile home if the court finds it is in the juvenile's best interest and the juvenile can be returned home safely pending adjudication. A.C.A. §9-27-315(a)(1)(B) and §9-27-315(c)
- ③ Court shall set date and time for adjudication hearing. A.C.A. §9-27-315(d)(1)

JUDGES' PROBABLE CAUSE HEARING CHECKLIST

Best Practice: Judge should order staffing with parties to develop case plan (law requires initial plan within 30 days of removal) and for the case plan to be filed with the court and provided to the parties by a specific date prior to the adjudication hearing. Judge should consider ordering mediation to develop the case plan at initial staffing. Judge should also order UAMS comprehensive and parents to participate, if appropriate or other person who knows child's medical history.

Note: The Rules of Evidence do not apply at the Probable Cause Hearing. A.C.A. §9-27-315(e)

VII. DEPENDENCY-NEGLECT PROCEEDINGS

A. Probable Cause Hearings

1. Purpose

To determine if probable cause to issue an emergency ex parte order continues to exist. **Ark. Code Ann. §9-27-315(a)(1)(A) (Supp. 2007).**

- a. Court shall issue an ex parte order to remove the juvenile from the custody of the parent, guardian, or custodian when probable cause exists that immediate emergency custody is necessary to:
 - (1) protect the juvenile's health or physical well-being from immediate danger; or
 - (2) prevent juvenile's removal from state; **Ark. Code Ann. §9-27-314(a)(1) (Supp. 2007).**
- b. To provide specific appropriate safeguards to protect the juvenile when there is probable cause to believe an emergency order is necessary to protect the juvenile from severe maltreatment, if the alleged offender:
 - (1) has a legal right to custody or visitation with the juvenile,
 - (2) has a property right allowing access to the home where the juvenile resides, or
 - (3) is a juvenile. **A.C.A. §9-27-314(a)(2) (Supp. 2007).**

Severe maltreatment means:

- sexual abuse,
- sexual exploitation,
- acts or omissions which may result in death,
- abuse involving the use of a deadly weapon,
- bone fracture,
- internal injuries,
- burns,

>immersions,

>suffocation,

>abandonment,

>medical diagnosis of failure to thrive, or

>causing a substantial and observable change in behavior or demeanor of the child; or A.C.A. §12-15-503(16) (Supp. 2007).

- c. When there is probable cause to believe that a juvenile is dependent, the court shall issue an ex parte order for emergency custody to DHS. A.C.A. §9-27-314(a)(2) (Supp. 2007).

Dependent juvenile means:

>a child of a parent in DHHS custody;

>a child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child;

>a child whose parent or guardian is incapacitated so they cannot care for the juvenile and they have no appropriate relative or friend to care for the child;

>a child whose custodial parent dies and no stand-by guardian exists;

>a child who is an infant relinquished to the custody of DHS for the sole purpose of adoption;

>a safe-haven baby; or

>a child who has disrupted his/her adoption and the adoptive parents have exhausted resources available to them. A.C.A. § 9-27-503(17) (Supp. 2007).

2. Notice

- a. The emergency ex parte order shall include notice to that parent, custodian, or guardian of the right to:

- (1) a hearing and procedure for obtaining Probable Cause Hearing

- (1) a hearing and procedure for obtaining Probable Cause Hearing within five business days of issuance of ex parte order;
- (2) representation by counsel; and
- (3) to appointed counsel if indigent and procedure for obtaining appointed counsel. **Ark. Code Ann. §9-27-314(b)(1-3) (Supp. 2007).**

The court may appoint counsel for the parent or guardian for whom custody was removed in the emergency ex parte order. **Ark. Code Ann. §9-27-316(h)(1)(B) (Supp. 2007).**

Note: Best practice is to appoint counsel for the parent or guardian when a child is first removed so they can appear at the first hearing prepared with counsel to provide the court valuable information concerning the needs of the child, family and possible relative placements

The state only pays for parent counsel for parents or guardians from whom custody is removed and/or prior to a termination of parental rights hearing if the parent is indigent and requests counsel. If the court appoints counsel in the emergency ex parte order, the court shall determine the request for counsel and indigency at the Probable Cause Hearing based on indigency affidavit and filed with the court. **Ark. Code Ann. §9-27-316(h) (Supp. 2007); §9-27-401 (Supp. 2007).**

- b. Appointment of the attorney ad litem for the child. **Ark. Code Ann. §9-27-316(f)(1) (Supp. 2007).**
- c. Location and telephone number of court. **Ark. Code Ann. §9-27-314(b) (Supp. 2007).**
- d. Immediate notice of order shall be given to juvenile's parents, guardians, or custodian by petitioner or court. **Ark. Code Ann. §9-27-314(c)(1) (Supp. 2007).**
- e. All defendants shall be served according to ARCP or as otherwise provided by court. **Ark. Code Ann. §9-27-314(c)(2) (Supp. 2007)**

3. Time Constraints

- a. Court shall conduct a Probable Cause Hearing within five business days of

issuance of the emergency ex parte order. Ark. Code Ann. §9-27-315(a)(1)(A) (Supp. 2007); Ark. Code Ann. §9-27-314(b)(I) (Supp. 2007).

- b. A written order shall be filed by the court or by a party or party's attorney as designated by the court within 30 days of the date of the Probable Cause Hearing, or prior to the next hearing, whichever is sooner. Ark. Code Ann. §9-27-315(d)(3) (Supp. 2007).
- c. The court shall set the date and time for the Adjudication Hearing at Probable Cause Hearing. The Adjudication Hearing shall be held within 30 days of the Probable Cause Hearing and may be continued for no more than 30 days for good cause shown. Ark. Code Ann. §9-27-315(d)(Supp. 2007); Ark. Code Ann. §9-27-327(a)(1) (Supp. 2007)

4. Hearing Limitations

- a. The hearing shall be limited to determining whether there was probable cause to protect the juvenile and whether probable cause warrants continued protection. Ark. Code Ann. §9-27-315(a)(1)(B)(I) (Supp. 2007).
- b. All other issues, with the exception of custody and services, shall be reserved by the court until the adjudication hearing. Ark. Code Ann. §9-27-315(a)(2)(A) (Supp. 2007).
- c. All probable cause hearings are miscellaneous hearings. The Arkansas Rules of Evidence do not apply. Ark. Code Ann. §9-27-315(e) (Supp. 2007); Ark. R. Evid., Rule 1101(b)(3).

5. Burden of Proof

Petitioner has burden of proof by a preponderance of the evidence that probable cause exists for continuation of emergency order. Ark. Code Ann. §9-27-315(b) (Supp. 2007).

6. Court Findings

- a. The court shall order that probable cause continues to exist and the juvenile cannot return safely home or order the juvenile to return home pending adjudication if it determines that the juvenile can safely return and it is in the juvenile's best interest. Ark. Code Ann. §9-27-315(a)(1)(B) (Supp. 2007); Ark. Code Ann. §9-27-315(c) (Supp. 2007).

Circuit Court affirmed for placing the custody of a child with his paternal grandparent's who lived in another state at the probable cause hearing and closing the case. DHHS appealed on five grounds. The case arose when the police were contacted when a two year-old was left locked in a car at the mall. The mother appeared and DHHS took a 72 hold and filed an emergency petition for custody. Prior to the probable cause hearing the child's father filed a paternity petition to establish paternity and to request the child to be placed in the custody of his parents.

At the probable cause hearing, both parents and the maternal and paternal grandmother testified they all lived in Sallisaw, Oklahoma. They also testified that the child had lived with the paternal grandparents since April 2005 and they all wanted custody to remain with the paternal grandparents. The paternal grandmother testified that the child was covered on their health insurance policy. Evidence also included an approved home study from a licensed social worker for the Arkansas without objection, a background check, testimony that the grandparents had provided excellent care for the child, and several letters from community members stating that the paternal grandparents were qualified and financially able to care for the child.

The circuit court found that probable cause existed at the time of removal; the father was the legal father; an approved home study was performed and custody should be placed with the grandparents. Since no further services were found to be necessary, the court closed the case.

DHS argued that the court could not close the case prior to adjudication. The Court held that the statute does not require the court to hold adjudication. Second, DHS argued that the home study was not performed by a licensed "certified" social worker; however, DHS did not object to the social worker's qualification or the home study at the hearing. DHS' third argument was that a court may not grant permanent custody at a probable cause hearing. Ark. Code. Ann. §9-27-315(a)(1)(B) specifically provides that the courts may enter orders as to "issues to custody and delivery of services" at probable cause hearings. *Arkansas Dep't of Human Servs. v. Jones*, 97 Ark. App. 267, ___ S.W. 3d. ___ (2007).

Emergency hearing orders are not final and appealable orders. Dover v. Arkansas Dep't. of Human Servs., 62 Ark. App. 37, 968 S.W.2d 635 (1998); *Johnston v. Arkansas Dep't. of Human Servs.*, 55 Ark. 392, 935 S.W.2d 589 (1997).

b. Federal IV-E Adoption Safe Families Act (ASFA) Initial Removal Finding

(1) In the initial order of removal the court must find:

- (a) Whether it is contrary to the welfare of the juvenile to remain at home;**
- (b) Whether removal and the reasons for removal are necessary to protect the health and safety of the juvenile; and**
- (c) Whether removal is in the best interest of the juvenile. Ark. Code Ann. §9-27-328(b) (Supp. 2007).**
- (d) Where the state agency's first contact with the family has occurred during an emergency in which the juvenile could not safely remain at home, even with reasonable services provided, the agency is deemed to have made reasonable efforts to prevent or eliminate the need for removal. Ark. Code Ann. §9-27-328(c) (Supp. 2007).**

JUDGES' ADJUDICATION/DISPOSITION HEARING CHECKLIST

A.C.A. §9-27-327; -329; -334; -335

Petitioners:

- ✓ Any adult and any juvenile in the home age 10 years or older A.C.A. §9-27-310(b)(3)
- ✓ Only law enforcement, prosecuting attorney or DHS or its designee can file d-n petition seeking ex parte relief A.C.A. §9-27-310(b)(2)

Venue:

- ✓ Shall be commenced in the county where the juvenile resides or where the alleged act or omission occurred. No d-n petition shall be dismissed if filed in the incorrect county, but shall be transferred to the proper county upon the discovery of the juvenile's residence A.C.A. §9-27-307(a)(1)(B) - (2)(C)
- ✓ Following the adjudication, the court may on its own motion or any party's motion transfer the case to the juvenile's residence when UCCJEA does not apply. A.C.A. §9-27-307(b)(1)
- ✓ Prior to transferring a case to another venue the judge shall contact the judge in the judicial circuit to see if the judge will accept the case and to schedule the next hearing date in the new circuit. The transferring judge shall send a copy of the case file and enter the scheduled date and time of the next hearing in the new circuit in the transfer order. A.C.A. §9-27-307(c)

Adjudication & Disposition Purpose:

- To determine whether allegations in the petition are substantiated by the evidence. A.C.A. §9-27-327(a)(1)(a)
- To enter orders consistent with disposition alternatives. A.C.A. §9-27-329(a)
- In considering the disposition alternatives the court shall give preference to the least restrictive disposition consistent with the best interest and welfare of the juvenile. A.C.A. §9-27-329(d)

Note: If juvenile has already been adjudicated d-n in same case and a motion for custody is filed in same case, a subsequent adjudication is not necessary if the ground for removal is the same type of ground already adjudicated in same case. A.C.A. §9-27-315(d)(2)

Time Constraints:

- ⊙ By agreement of the parties and with the court's approval, the Adjudication Hearing can be held anytime after the Probable Cause hearing. However, the Adjudication Hearing shall be held within 30 days of the Probable Cause Hearing and may be continued for no more than 30 days upon motion of the court or parties for good cause shown. A.C.A. §9-27-315(a)(2)(B) and §9-27-327(a)(1)(A)
- ⊙ A written adjudication order shall be filed by the court within 30 days of the date of the adjudication hearing or prior to the next hearing, whichever is sooner. A.C.A. §9-27-327(f)(1)
- ⊙ Any predisposition reports shall be provided in writing to all parties and counsel at least two days prior to the disposition hearing. A.C.A. §9-27-327(e)
- ⊙ The Disposition Hearing may be held immediately following or concurrent with the Adjudication Hearing, but shall be held no more than 14 days following the Adjudication Hearing. A.C.A. §9-27-329(c)
- ⊙ A written disposition order shall be filed by the court, or by a party or party's attorney as designated by the court, within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. A.C.A. §9-27-329(e)
- ⊙ Within 60 days from removal the court must make reasonable efforts findings to prevent removal. A.C.A. §9-27-328(b)(1)(C)

Present at Hearing:

- ✓ Judge
- ✓ Parties, including children, unless excused for good cause by court
- ✓ Attorneys for all parties and CASA, if appointed
- ✓ CASA volunteer, if appointed
- ✓ Foster parents or relative caregivers
- ✓ Investigator, case worker, and relevant witnesses
- ✓ Court Reporter

Burden of Proof:

Preponderance of the evidence

JUDGES' ADJUDICATION/DISPOSITION HEARING CHECKLIST

Best Practice: Judge should explain the purpose of the hearing at the beginning and ensure that all parties are identified and have counsel if entitled to counsel or counsel is properly waived. All witnesses should be sworn on the record. Ensure that foster parents are provided a right to be heard if not called as a witness.

Issues:

- Have all the parties been properly identified and served with petition?
- Ensure that DHS provided notice of hearing to foster parents or relative caregivers and that they have an opportunity to be heard as required by law.
- Counsel for all parties entitled to appointment or proper waiver on the record?
- Did all parties receive a copy of the case plan, UAMS comprehensive, and any exhibits that plan to be admitted at the hearing?

A.C.A. §9-27-327; -329; -334; -335

Adjudication

- Have the allegations in petition been substantiated by the proof?
- Is child d-n as defined by the statute - start with A.C.A. §9-27-303(18)

Best Practice: Make specific findings of fact on the record to be included in a written order as to the adjudication of dependency-neglect. If the court accepts the parties' stipulation, the stipulations should:

1. Include specific facts, not just a finding of dependency-neglect;
2. The stipulated facts and conclusions of law should be read in the record and included in the court order; and
3. The court should verify on the record that all parties agree to the stipulated facts and the conclusions of law.

Disposition

Best Practice: The case plan should drive the case if the children are adjudicated dependent-neglected. Ask if parents and children, if age appropriate, participated in the development of the case plan. First, determine if the case plan goal is appropriate. Then does it meet the

children's needs, specifically the child's health, safety, educational, and mental health needs. Then, focus on the services to parents that would alleviate the reason the children came to the court's attention.

If children cannot return home to their parents what is the best placement for the child? If you ordered relative home studies at the PC Hearing are any relatives a viable option for placement? If you do place custody with a relative make sure the order specifies that they are not to change custody of the children without an order from the court and make needed orders regarding visitation, including sibling visitation if the siblings cannot be placed together.

Disposition Alternatives & Limitations

- ① **Order family services defined at A.C.A. 9-27-303(25) A.C.A. §9-27-334(a)(1)**
 - ✓ If DHS is not party, court must provide DHS five days notice of intent to order DHS to provide services or order is void. A.C.A. §9-27-335(a)(1)
 - ✓ Court shall not specify a particular provider for family services when DHS is the payor or provider. A.C.A. §9-27-335(b)
 - ✓ Court shall determine parent's, guardian's, or custodian's ability to pay in part or whole for services and shall include findings in written order. A.C.A. §9-27-335(c)(1)
- ② **If in child's best interest - Transfer custody to DHS, licensed agency responsible for care of juveniles, relative, or other individual A.C.A. §9-27-334(a)(2)**
 - ✓ Custody can be transferred to a relative or other individual only after a home study by DHS or social worker of the placement is conducted and submitted to court in writing and court determines placement in child's best interest. A.C.A. §9-27-335(d)
 - ✓ Prior to placing a child in DHS custody, court must find that reasonable efforts (RE) were made to prevent need for removal. Reasonable efforts are deemed if emergency. A.C.A. §9-27-335(e)

JUDGES' ADJUDICATION/DISPOSITION HEARING CHECKLIST

- ✓ If court finds that RE could have been made with the juvenile remaining safely at home, but that DHS failed to do so the court may dismiss the petition, order services, or transfer custody to protect child's health and safety or prevent removal from court's jurisdiction. A.C.A. §9-27-335(e)(2)
- ✓ If court finds that RE could have been made with the juvenile remaining safely at home, but that DHS failed to do so the court may dismiss the petition, order services or transfer custody to protect child's health and safety or prevent removal from court's jurisdiction. A.C.A. §9-27-335(e)(2)

If court transfers to DHS, the court shall issue orders regarding educational issues of the juvenile including:

- ✎ If the parent or guardian(P/G) shall have access to school records;
 - ✎ If P/G entitled to school records are they entitled to placement information – name and address of foster parent; and
 - ✎ If P/G may participate in any school conferences or similar school activities.
 - ✎ The court may also appoint an individual to consent to the IEP as a surrogate parent, including the foster parent. A.C.A. §9-27-103(b)(6)(B)
- ③ Order parent/guardian/custodian to attend parental responsibility training. A.C.A. §9-27-334(a)(4)

IV-E COURT FINDING REQUIRED

Within 60 days of removal the court must find if DHS made reasonable efforts to prevent removal of the family specifically:

- ① Which family services were made available prior to removal of the juvenile;

- ② What efforts were made to provide those family services relevant to the needs of the family before the removal of the juvenile, taking into consideration whether or not the juvenile could remain safely in the home while services were provided;
- ③ Why efforts made to provide the family services did not prevent removal of the juvenile; and
- ④ Whether efforts made to prevent removal were reasonable based on the needs of the family and juvenile. §9-27-328(b)

Where the state's first contact with the family has occurred during an emergency in which the juvenile could not remain safely in the home even with reasonable efforts being provided, reasonable efforts shall be deemed. A.C.A. §9-27-328(c)

Best Practice: Court should ensure that all of the parties understand what they are required to do. Court should remind the parties that "the clock is ticking." Court should schedule next hearings (review and permanency planning) for date and time specific.

the juvenile code controlled instead of those in the Arkansas Rules of Civil Procedure because the juvenile code serves the specific purpose of expediting hearings involving children in out-of-home placements.

The trial court went on to adjudicate the child dependent-neglected finding that the injuries were not accidental; that one or both parents were the likely cause of the injuries; and despite the parents' denial, the X-rays indicated that the fractures were from varying ages and they were of the type consistent with child abuse, and the radiologist findings were suspicious of trauma. While noting that the results of the test for brittle bone disease had not yet been received, the trial court found that the observation of medical personnel did not reveal symptoms of brittle bone disease. The adjudication order was not appealed. At the disposition hearing on April 7, the trial court held that the goal should be adoption. On May 13, the court entered a no-reunification order finding that the child had been subjected to extreme and repeated cruelty, that the injuries were not accidental, that one or both parents caused the injuries, and that when received, the brittle bone test showed no abnormal findings. At this hearing the trial court denied appellant's motion to call an expert witness to testify as to alternative theories for the infants injuries. The court ruled that res judicata applied and that expert testimony was not relevant at this stage of the proceedings. Appellants' filed a notice of appeal after the no-reunification order and the TPR order handed down on November 16, 2004.

*The appellate court noted that the time for appellant to present that testimony was prior to the adjudication. The appellate court held that it was not necessary to address appellant's res judicata argument because appellant failed to appeal the adjudication order. The Supreme Court made clear in the Jefferson and Lewis cases that the appellate court will not re-litigate the adjudication hearing at future hearings, including the termination of parental rights hearing. The appellant could have appealed the adjudication order, but failed to do so. **Neves da Rocha v. Arkansas Dep't of Human Servs.**, 93 Ark. App. 366, 219 S.W.3d 660 (2005).*

Change of custody consolidated in dependency-neglect action upheld. Appellant's children were removed due to severe physical abuse of her five-week old child. The father of one of the children (A.J.) filed a notice with the court of a motion for change of custody. The trial court found the children to be dependent-neglected and ordered temporary custody of A.J. with her father with the goal of reunification with appellant. Several review hearings were held. Court continued custody with the father and entered change custody based on a material change of circumstances.

A court may consolidate all actions involving a common question of law or fact pending before the court. In cases involving children, the primary consideration is the child's best interest and welfare, regardless of the goals of the parties or the particular type of proceeding. Having found that appellant had not complied with the case plan, the court properly made the custody determination based on the change of custody petition and found a material change in circumstances. Miller v. Arkansas Dep't of Human Servs., 86 Ark. App. 172, 167 S.W.3d 153 (2004).

The Court of Appeals dismissed as moot appellant's appeal of her dependency-neglect adjudication based on parental unfitness because her child was returned to her custody. Despite briefs requesting review by DHS and appellant, the Court stated that the case was moot because there was no practical legal effect on an existing legal controversy. Richardson v. Arkansas Dep't of Human Servs., 86 Ark. App. 142, 165 S.W. 3d 127 (2004).

The juvenile code defines a juvenile as an individual from birth to the age of 18. An unborn fetus does not fall within this definition. A writ of certiorari was granted because the judge exceeded her statutory authority by declaring the fetus to be dependent-neglected, placing the fetus in DHS custody and ordering prenatal care. Arkansas Dep't of Human Servs. v. Collier, 351 Ark. 380, 92 S.W. 3d 683 (2003).

There was sufficient evidence to find the child dependent-neglected where there was evidence that the injury was not consistent with the explanation given. In addition, there was evidence that the appellant sent her seven-year-old son unsupervised into a bathroom to bathe without determining the temperature of water, resulting in the child suffering second-degree burns. Appellant argued that the court erred in admitting the medical records over her hearsay objection. The Hospital Records Act is an exception to the hearsay rule and the trial court did not abuse discretion in admitting it. While other objections may have sufficed to exclude certain portions of the medical records, such objections were not made.

The appellant argued that the trial court erred in allowing the doctor to give her medical opinion without being qualified as an expert witness at the adjudication hearing. If scientific, technical or other specialized knowledge would will assist the trier of fact to understand the evidence or to determine

B. Dependency-Neglect Adjudication Hearings

1. Purpose

To determine whether the allegations in petition are substantiated by proof. Ark. Code Ann. §9-27-303(4) (Supp. 2007); Ark. Code Ann. §9-27-327(a) (Supp. 2007).

Dependency adjudication dismissal affirmed because DHS failed to meet its burden of proof. DHS failed to call any witness or present any evidence and rested solely on its pleadings that the father was a convicted sex offender and that the mother had failed to properly supervise the children by allowing him unsupervised custody. The appellant testified that she believed her children were safe and had complied with the DHS safety plan in order to keep her children. The caseworker testified that the appellants were complying with the safety plan and she believed that the mother would protect the children. Arkansas Dep't of Human Servs. v. Mitchell, __ Ark. App., __ (No. 07-427, September 26, 2007).

Dependency adjudication reversed where parent was arrested and there were appropriate relatives to care for the child. Ark. Code Ann. §9-27-303(17)(B) provides that a child is dependent when a parent is incarcerated and there is no appropriate relative or friend to care for the child. In this case when the father was arrested his father and an aunt and uncle were available to take custody of his child. Parent counsel also presented evidence at the adjudication that DCFS had reviewed their respective homes and found them appropriate. No evidence was presented at the hearing that the relatives were inappropriate to care for the child. Moiser v. Arkansas Dep't of Human Servs., 95 Ark. 32, __ S.W. 3d __ (2006).

Infant was found dependent-neglected as a result of multiple broken bones of varying ages. At the time of the adjudication all bone tests were normal, but one test on brittle bone disease was not completed in time for the adjudication hearing. On March 24, 2004, the date set for the adjudication hearing, appellant's attorney objected and requested a continuance, claiming that the statute mandating that the adjudication hearing be held within 60 days of the probable-cause hearing was unconstitutional and violated his client's procedural and due process rights because the definitive test on brittle bone disease had not yet been completed. In Hathcock v. Arkansas Dep't of Human Servs., 347 Ark. 819, 69 S.W.3d 6 (2002), the Supreme Court ruled that time constraints in

a fact in issue, a witness may testify thereto in the form of an opinion or otherwise. R. Evid. 702 (2002). The "rational connection" test of Ark. R. Evid. 701 requires that the opinion or inference is one that a normal person would form on the basis of the observed facts. The trial court did not abuse its discretion in permitting the treating physician to testify without first being qualified as an expert witness. The physician's opinion that someone would have more extensive burns if they fell into a bathtub of scalding water is an opinion that a normal person could form on the basis of the observed facts. The trial court did not abuse its discretion in permitting the doctor to provide opinion testimony regarding "friction burns" because she had knowledge of the treatment and diagnosis of burns from her medical training. Hopkins v. Arkansas Dept. Of Human Servs., 79 Ark. App. 1, 83 S.W. 3d 418 (2002).

The trial court was reversed for failure to adjudicate the siblings of a child who was found dependent-neglected. Evidence included a severe whipping, pouring salt into the wounds, keeping the child in the same pair of underwear for two days while bleeding and oozing caused his underwear to stick to his rear, and failure to seek medical care. The child abuse of one child demonstrated parental unfitness that put the other siblings at substantial risk of harm. Arkansas Dep't of Human Servs. v. Jorden, 80 Ark. App. 104, 91 S.W.3d, 536 (2002).

Appellant's children had been adjudicated dependent-neglected and subsequently returned to the custody of the mother. Some months later DHS filed a motion for ex parte emergency change of custody and the children were taken back into DHS custody. The Court affirmed the trial court's ruling that it was unnecessary to hold a second adjudication hearing at this point because the children were already adjudicated dependent-neglected. Walters v. Arkansas Dept. of Human Servs., 77 Ark. App 191, 72 S.W. 3d 533 (2002).

A dependent-neglected child is one who is at risk of serious harm from an unfit parent and such unfitness is not necessarily predicated upon the parent actually causing some direct injury to the child in question. Further, the juvenile court is a court of competent jurisdiction to determine that a parent committed a serious felony assault that results in serious bodily injury. Brewer v. Arkansas Dep't. Of Human Servs., 71 Ark. App. 364, 32 S.W.3d 22 (2001)(substituted opinion on grant of rehearing delivered April 25, 2001).

On April 18, 1995, DHS filed a petition with the juvenile court seeking an emergency removal of the appellant's daughter. On April 24, 1995, the court held an emergency (probable cause) hearing and determined that there was probable cause to believe that emergency conditions existed which necessitated the child's removal and that those conditions continued to exist. The court ordered the child to remain in DHS' custody pending the adjudication hearing. The court's adjudication order, entered on July 26, 1995, found that the child was dependent-neglected and that it was in the child's best interest to remain in foster care.

*A dependent-neglected child is a child at substantial risk of serious harm as a result of abandonment, abuse, sexual abuse, sexual exploitation, neglect or parental unfitness. Neglect is defined as an act or omission by a parent that constitutes the failure or irremediable inability to provide for the essential and necessary physical, mental or emotional needs of a juvenile. At the adjudication hearing the court was presented with conflicting testimony concerning appellant's ability to provide for her child. The chancellor's findings of fact will be reviewed de novo and will not be set aside unless they are clearly erroneous, giving due regard to the trial court's opportunity to judge the credibility of witnesses. **Johnston v. Arkansas Dep't. of Human Servs.**, 55 Ark. App. 392, 935 S.W.2d 509 (1996).*

*The juvenile division of chancery court, having found a child to be dependent or neglected, has the authority to make an award of custody of the child between competing parents. Appellant alleged that the definition of "neglect" in the Juvenile Code was not met despite evidence that she would not let her daughter remain at a psychiatric facility for the duration of her treatment; the Court said neglect could be found despite appellant's lack of intent to harm her child. **Nance v. Arkansas Dept. of Human Servs.**, 316 Ark. 43, 870 S.W.2d 721 (1994).*

*During an action to determine whether appellants' children were dependent-neglected minors, both children were examined by a physician and X-rays were taken. Subsequently, the appellants were ordered, without hearing or notice, to pay the costs of the physical examinations. The Court held that parents of children found to be dependent-neglected minors could not be required to pay such investigative expenses. **Bates v. Reynolds**, 299 Ark. 280, 771 S.W.2d 774 (1989).*

Note: Court now required to assess parent's ability to pay for family services. The court shall order financial able parents to

pay in whole or part for services. See Ark. Code Ann. §9-27-335(c)(Supp. 2007).

2. Time Constraints

- a. A dependency-neglect adjudication hearing shall be held within 30 days of the probable cause hearing, but upon a motion of the court or parties for good cause shown may be continued for no more than 30 days following the first 30 days Ark. Code Ann. §9-27-327(a)(1)(B) (Supp. 2007).

Note: Statutory changes made since Hathcock, yet no effect on the court's holding. The time frame has been extended for a continuance for no more 30 days (added 10 days) and the statutory site has changed.

Appellant argued that the trial court erred in denying his motion for a continuance because he was subject to a criminal proceeding. As a result, he would exercise his 5th Amendment rights and not be able to testify at the adjudication hearing. The trial court denied the continuance based on the statutory requirement at A.C.A. §9-27-315(d)(2) that requires an adjudication hearing to be held within 30 days of an emergency hearing and that it may not be continued for more than 20 days.

The Court held A.C.A. §9-27-315(d)(2) controls because it expedites hearings involving children in out-of-home placements and serves a specific purpose not in conflict with Rule 40(b). The Constitution does not require a stay of civil proceedings pending the outcome of criminal proceedings, but a court has discretion to stay civil proceedings where the intent of justice requires a stay. Delays in D-N proceedings would run counter to the public interest of protecting children and providing them permanency. Hathcock v. Arkansas Dept. of Human Servs., 347 Ark. 819, 69 S.W.3d 6 (2002).

- b. In dependency-neglect cases, a written adjudication order shall be filed by the court or by a party or party's attorney as designated by the court within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. §9-27-327(f) (Supp. 2007).

3. Burden of Proof

Preponderance of the evidence. **Ark. Code Ann. §9-27-325(h)(2)(B) (Supp. 2007).**

4. Hearing Limitations

- a. In medical neglect cases involving a child's receiving treatment through prayer alone in accordance with a religious method of healing in lieu of medical care, the adjudication order shall be limited to:
 - (1) preventing or remedying serious harm to the child; or
 - (2) preventing the withholding of medically indicated treatment from the child with a life-threatening condition. **Ark. Code Ann. §9-27-325(f) (Supp. 2007).**

5. Studies & Reports

- a. Court may order studies, evaluations, or predisposition reports, if needed and bear on the disposition, following adjudication. **Ark. Code Ann. §9-27-327(d) (Supp. 2007).**
- b. Reports shall be written; and be provided to all parties and counsel at least two days prior to disposition hearing. **Ark. Code Ann. §9-27-327(e)(Supp. 2007).**
- c. All parties shall be given a fair opportunity to controvert any part of reports. **Ark. Code Ann. § 9-27-327(e)(2) (Supp. 2007).**

C. Dependency-Neglect Disposition Hearings

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1. Purpose

- a. To determine what action will be taken following adjudication to enter orders consistent with the disposition alternatives. **Ark. Code Ann. §9-27-303(22) (Supp. 2007); Ark. Code Ann. §9-27-329(a) (Supp. 2007).**
- b. The court shall consider the disposition alternatives with preference for the least restrictive disposition consistent with best interest and welfare of the juvenile and the public. **Ark. Code Ann. §9-27-329(d) (Supp. 2007).**

~~family services. The court shall order financial able parents to pay in whole or part for services. See Ark. Code Ann. §9-27-335(c)(Supp. 2007).~~

2. Time Constraints

- a. A dependency-neglect adjudication hearing shall be held within 30 days of the probable cause hearing, but upon a motion of the court or parties for good cause shown may be continued for no more than 30 days following the first 30 days Ark. Code Ann. §9-27-327(a)(1)(B) (Supp. 2007).

Note: Statutory changes made since Hathcock, yet no effect on the court's holding. The time frame has been extended for a continuance for no more 30 days (added 10 days) and the statutory site has changed.

Appellant argued that the trial court erred in denying his motion for a continuance because he was subject to a criminal proceeding. As a result, he would exercise his 5th Amendment rights and not be able to testify at the adjudication hearing. The trial court denied the continuance based on the statutory requirement at A.C.A. §9-27-315(d)(2) that requires an adjudication hearing to be held within 30 days of an emergency hearing and that it may not be continued for more than 20 days.

The Court held A.C.A. §9-27-315(d)(2) controls because it expedites hearings involving children in out-of-home placements and serves a specific purpose not in conflict with Rule 40(b). The Constitution does not require a stay of civil proceedings pending the outcome of criminal proceedings, but a court has discretion to stay civil proceedings where the intent of justice requires a stay. Delays in D-N proceedings would run counter to the public interest of protecting children and providing them permanency. Hathcock v. Arkansas Dept. of Human Servs., 347 Ark. 819, 69 S.W.3d 6 (2002).

- b. In dependency-neglect cases, a written adjudication order shall be filed by the court or by a party or party's attorney as designated by the court within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. Ark. Code Ann. §9-27-327(f) (Supp. 2007).

3. Burden of Proof

Preponderance of the evidence. **Ark. Code Ann. §9-27-325(h)(2)(B) (Supp. 2007).**

4. Hearing Limitations

a. In medical neglect cases involving a child's receiving treatment through prayer alone in accordance with a religious method of healing in lieu of medical care, the adjudication order shall be limited to:

(1) preventing or remedying serious harm to the child; or

(2) preventing the withholding of medically indicated treatment from the child with a life-threatening condition. **Ark. Code Ann. §9-27-325(f) (Supp. 2007).**

5. Studies & Reports

a. Court may order studies, evaluations, or predisposition reports, if needed and bear on the disposition, following adjudication. **Ark. Code Ann. §9-27-327(d) (Supp. 2007).**

b. Reports shall be written; and be provided to all parties and counsel at least two days prior to disposition hearing. **Ark. Code Ann. §9-27-327(e)(Supp. 2007).**

c. All parties shall be given a fair opportunity to controvert any part of reports. **Ark. Code Ann. § 9-27-327(e)(2) (Supp. 2007).**

C. Dependency-Neglect Disposition Hearings

1. Purpose

a. To determine what action will be taken following adjudication to enter orders consistent with the disposition alternatives. **Ark. Code Ann. §9-27-303(22) (Supp. 2007); Ark. Code Ann. §9-27-329(a) (Supp. 2007).**

b. The court shall consider the disposition alternatives with preference for the least restrictive disposition consistent with best interest and welfare of the

juvenile and the public. **Ark. Code Ann. §9-27-329(d) (Supp. 2007).**

2. Time Constraints

- b. The disposition hearing may be held immediately following or concurrent with the adjudication hearing, but in any event shall be held no more than 14 days following the adjudication hearing. **Ark. Code Ann. §9-27-329(c)(1) (Supp. 2007).**
- b. A written disposition order shall be filed by a party or party's attorney as designated by the court within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-329(e) (Supp. 2007).**

3. Evidence

The court may admit into evidence any studies or reports which have been ordered, even if not admissible at adjudication hearing. **Ark. Code Ann. §9-27-329(f) (Supp. 2007).**

4. Required Reasonable Efforts - Adoption Safe Families Act (ASFA) - 60 Day Findings

Within 60 days of removal the court must find:

- (a) which family services were made available to family prior to removal;
- (b) what efforts were made to provide family services relevant to the needs of the family prior to removal, taking into consideration whether or not the juvenile could remain safely at home with services;
- (c) why efforts made to provide family services described did not prevent removal; and
- (d) whether efforts made to prevent removal of juvenile were reasonable based upon the family's and juvenile's needs. **Ark. Code Ann. §9-27-328(b) (Supp. 2007).**
- (e) The department is deemed to have made reasonable efforts to prevent or eliminate the need for removal when its first contact

with family occurred during an emergency in which the juvenile could not remain at home safely, even if reasonable services were provided. **Ark. Code Ann. §9-27-3289(c) (Supp. 2007).**

D. Dependency-Neglect Disposition Alternatives

If the juvenile is found dependent-neglected the circuit court may enter any of the following dispositions:

1. Family Services - Ark. Code Ann. §9-27-334(a)(1) (Supp. 2007).

a. Family services means relevant services provided to the juvenile or his/her family, including but not limited to:

- (1) child care,
- (2) homemaker services,
- (3) crisis counseling,
- (4) cash assistance,

Short term financial assistance, and does not include long-term financial assistance that is the equivalent of a board payment or adoption subsidy. **Ark. Code Ann. §9-27-303(10) (Supp. 2007).**

- (5) transportation,
- (6) family therapy,
- (7) physical, psychiatric or psychological evaluation,
- (8) counseling, or
- (9) treatment. **Ark. Code Ann. §9-27-303(24)(A) (Supp. 2007).**

Prior to the court placing a juvenile in a residential placement the court shall comply with the mental health assessments required by Act 1959 of 2005. **Ark. Code Ann. §9-27-602 (Supp. 2007); Ark. Code Ann. §9-27-603 (Supp. 2007);** For detailed information on the mental health assessments required go to XIX. MISCELLANEOUS D. Mental Health Assessments.

The trial court was upheld in ordering DHS to pay the Brown School \$48,000. The trial court did not err because it ordered placement in a "residential treatment facility" and did not order a specific named placement facility. DHS is obligated by statute to provide services, including treatment in a residential facility if the court determines it is necessary. Arkansas Dep't of Human Servs. v T.B., 347 Ark. 593, 67 S.W. 3d 539 (2002).

The court ordered DHS to provide adequate housing, including electric and water utilities and held DHS and Sandi Doherty in willful contempt for failing to abide by its order. DHS argued that the trial court lacked the statutory authority to order family services. Ark. Code Ann. §9-27-307(17) defines family services as relevant services, including... cash assistance... to prevent a juvenile from being removed from a parent... The trial court did not exceed the statutory criteria for family services. At the September 30 hearing, the court unequivocally stated that it was ordering services to prevent R.P. from being removed from her mother.

The trial court's order of family services was not defective because it failed to make specific written findings. Ark. Code Ann. § 9-27-328 requires specific findings only when the court orders removal from a custodial parent. DHS' contention that the court's order did not comply with its policy is without merit. The juvenile court's orders do not have to comply with DHS policy. Further, the record does not show that DHS could not have paid the bills and in fact funds were available.

DHS argued that it could not be made a defendant without waiving sovereign immunity and that the court's order coerced DHS into bearing a financial burden which is barred. There is a waiver of sovereign immunity where an act by the legislature has created a specific waiver of immunity. The Juvenile Code expressly empowers the court to order family services in FINS cases (Ark. Code Ann. §9-27-330) and family services includes cash assistance Ark. Code Ann. §9-27-303(17). Pursuant to Ark. Code Ann. §9-27-328(a), a court is required to order family services appropriate to prevent removal. Therefore, the General Assembly has specifically waived sovereign immunity as to DHS in such cases. Finally, DHS argued that the court's order violated separation of powers, but this theory was not raised or developed below with respect to setting aside the court's September 30 order. Arkansas Dep't of Human Servs. v. R.P., 333 Ark. 516, 970 S.W. 2d 235 (1998).

The court affirmed the juvenile court's finding that DHS was in contempt for failure to provide the services as ordered and imposition of a \$250 fine. Arkansas Dep't. of Human Servs. v. Clark, 305 Ark. 561, 810 S.W.2d 331 (1991).

An order directing DHS to pay appellee a foster care board payment for a six-month period was reversed because the court lacked authority to order DHS to pay. Appellee was not a certified foster parent and was not entitled to board payments between June and November pursuant to DHS policy which mirrors the federal law definition of a foster family at 42 U.S.C.S. §672(c)(1). Arkansas Dept. of Human Servs. v. Southerland, 65 Ark. App. 97, 985 S.W.2d 336 (1999).

The Arkansas Supreme Court upheld a juvenile judge's award of specific services, funds for a mother's medication and bus tokens or bus credits for mother and children to attend counseling sessions. Further, the juvenile court is not required to fashion orders within DHS policy guidelines; juvenile court has the authority under the Juvenile Code to review action of DHS and the evidence supported the finding that the mother was in need of assistance and transportation. Arkansas Dep't. of Human Servs. v. Clark, 304 Ark. 403, 802 S.W.2d 461 (1991).

- b. Family services are provided to:
 - (1) Prevent a juvenile from being removed from a parent, guardian or custodian;
 - (2) Reunite a juvenile with a parent, guardian, or custodian from whom he/she was removed; or
 - (3) Implement a permanent plan of adoption, guardianship or rehabilitation of the juvenile. **Ark. Code Ann. §9-27-303(25)(B) (i-iii)(Supp. 2007).**
- c. At least five working days prior to ordering DHS to provide or pay for services, excluding community-based providers, in any case in which DHS is not a party, the court shall:
 - (1) fax written notice of intent to order services to the DHS Director and the local OCC attorney; and
 - (2) provide DHS an opportunity to be heard. **Ark. Code Ann. § 9-27-335(a)(1-2) (Supp. 2007).**
- d. Failure to provide five working days notice to DHS renders any part of the order pertaining to DHS void. **Ark. Code Ann. § 9-27-335(a)(3) (Supp. 2007).**

the order pertaining to DHS void. **Ark. Code Ann. § 9-27-335(a)(3) (Supp. 2007).**

- e. In all cases in which family services are ordered, the court shall determine the parent's, guardian's, or custodian's ability to pay, in whole or in part, for said services. **Ark. Code Ann. §9-27-335(c)(1) (Supp. 2007).**
- f. The court's finding and supporting evidence shall be made in writing in the order requiring family services. **Ark. Code Ann. §9-27-335(c)(2) (Supp. 2007).**
- g. If the court determines that the parent, guardian or custodian is able to pay, in whole or part, for said services, the court shall enter a written order setting forth the amounts the parent, guardian, or custodian can pay for the family service(s) ordered, and ordering the parent, guardian or custodian to pay such amount periodically to the provider from whom family services are received. **Ark. Code Ann. §9-27-335(c)(3) (Supp. 2007).**
- h. The court shall not specify a particular provider for placement or family services when DHS is the payor or provider. **Ark. Code Ann. §9-27-335(b) (Supp. 2007).**

The trial court was upheld in ordering DHS to pay the Brown School \$48,000. The trial court did not err because it ordered placement in a "residential treatment facility" and did not order a specific named placement facility. DHS is obligated by statute to provide services, including treatment in a residential facility if the court determines it is necessary.

The General Assembly has waived sovereign immunity as to DHS when a court orders DHS to provide family services to prevent a juvenile from being removed from a parent. DHS' policy not to provide financial assistance for out-of-state treatment is not binding on the court's order. There was not a violation of the separation of powers doctrine because the court simply ordered the juvenile to be placed in a residential treatment facility. (The placement was made to Brown and the court subsequently ordered that the juvenile remain there. DHS recommended that the juvenile remain at Brown in a report to the court dated after Medicaid benefits had been denied.)

Compliance with A.C.A. §20-46-106 (regarding out-of-state placements) is DHS' responsibility and the fact that the court was

eager to get treatment did not absolve DHS from its responsibility under this section. The Court also noted that the purpose of the section is to ensure whenever possible that juveniles receive treatment in state; however, this was not the case as no facilities were available at that time in Arkansas. Arkansas Dep't of Human Servs. v T.B., 347 Ark. 593, 67 S.W. 3d 539 (2002).

2. Requirements Prior to Removing a Juvenile from Home

- a. Prior to ordering a juvenile to be removed from his/her parent, guardian, or custodian and placed with DHS, another licensed agency responsible for the care of a juvenile, relative or other individual, the court shall order family services to prevent removal unless the health and safety of the juvenile warrant immediate removal for the juvenile's safety. **Ark. Code Ann. §9-27-328(a) (Supp. 2007).**
- b. When the court orders such removal, the court shall make the following specific findings:
 - (1) The initial order shall provide:
 - (a) whether it is contrary to the welfare of the juvenile to remain at home;
 - (b) whether removal and the reasons for removal are necessary to protect the health and safety of the juvenile; and
 - (c) whether removal is in the best interest of the juvenile.

DHS sought to challenge a judge's placement with the agency claiming she failed to comply with Ark. Code Ann. §9-27-328(a)(2) by not making specific findings of fact that family services were made available before the child was removed from the grandmother's home. The issue is moot because at a later disposition hearing and prior to the agency filing a notice of appeal, the judge placed custody with the child's mother in another county. The Court does not issue advisory opinions nor review matters when the complaining litigant received the relief it requested. Arkansas Dep't. of Human Servs. v. State, 318 Ark. 294, 885 S.W.2d 14 (1994).

- c. Upon the court's finding that the department's preventative and reunification efforts have not been reasonable, but further efforts could not permit juvenile to remain safely in home, the court may:

- (1) Order family services reasonably calculated to prevent the need for out-of-home placement; **Ark. Code Ann. §9-27-335(e)(2) Supp. 2007).**
 - (2) Authorize or continue removal; **Ark. Code Ann. §9-27-328(d) (Supp. 2007).**
 - (a) The court may transfer custody of the juvenile despite the lack of reasonable efforts by the department to prevent the need for out-of-home placement, if such a transfer of custody is necessary:
 - (i) to protect the juvenile's health and safety; or
 - (ii) to prevent the juvenile from being removed from the jurisdiction of the court. **Ark. Code Ann. §9-27-335(e)(2) Supp. 2007).**
 - (3) Shall note in the record the department's failure to deliver services, or **Ark. Code Ann. §9-27-328(d) (Supp. 2007).**
 - (4) Dismiss the petition; **Ark. Code Ann. §9-27-335(e)(2) Supp. 2007).**
- d. Custody can be transferred only after determining that reasonable efforts have been made by DHS to deliver family services designed to prevent the need for out-of-home placement and that the need for out-of-home placement exists.
- (1) The juvenile's health and safety shall be the paramount concern for the court in determining whether or not DHS could have provided reasonable efforts to prevent the juvenile's removal. **Ark. Code Ann. §9-27-335(e)(2) Supp. 2007).**
- e. In all instances of removal of a juvenile from the home of his/her parent, guardian, or custodian, the court shall set forth in a written order:
- (1) evidence supporting decision to remove
 - (2) facts regarding the need for removal, and
 - (3) findings required by this section. **Ark. Code Ann. §9-27-328(e)(1) (Supp. 2007).**

- f. The written findings and the order shall be filed:
- (1) by the court or a party or party's attorney, as designated by the court, and
 - (2) within 30 days of the date of the hearing at which removal is ordered or prior to next hearing, whichever is sooner. **Ark. Code Ann. §9-27-328(e)(2) (Supp. 2007).**

The trial court's order of family services was not defective because it failed to make specific written findings. The statute requires specific findings only when the court orders removal from a custodial parent. Arkansas Dep't of Human Servs. v. R.P., 333 Ark. 516, 970 S.W. 2d 235 (1998).

3. **Transfer Custody**

- a. If in the best interest of the juvenile, transfer custody to DHS or another licensed agency responsible for care of juveniles, to relatives or to other individuals **Ark. Code Ann. §9-27-334(a)(2)(A) (Supp. 2007).**
- (1) Prior to the court placing a juvenile in a residential placement the court shall comply with the mental health assessments required by Act 1959 of 2005. **Ark. Code Ann. §9-27-602 (Supp. 2007); Ark. Code Ann. §9-27-603 (Supp. 2007);**

Note: For detailed information on the mental health assessments required go to XIX. MISCELLANEOUS D. Mental Health Assessments.
 - (2) Custody can only be transferred to a relative or other individual after a home study is conducted by DHS or a licensed certified social worker and submitted to the court in writing and the court determines that the placement is in the juvenile's best interest. **Ark. Code Ann. §9-27-335(d) (Supp. 2007).**
 - (3) The court shall order parents to pay a reasonable sum for support, maintenance or education of juvenile to any person, agency or institution to whom custody is awarded if it appears at adjudication or disposition hearing that the parents or other person named in petition are required by law to support juvenile and able to contribute to support of juvenile. **Ark. Code Ann. §9-27-346(a) (Supp. 2007).**

The court shall order such person to pay a reasonable sum pursuant to the Guidelines for Child Support and the Family Support Chart. **Ark. Code Ann. §9-27-346(a) (Supp. 2007); Administrative Order Number 10.**

- (4) If the court grants custody to DHS, the juvenile shall be placed in a licensed or approved foster home, shelter or facility or exempt child welfare agency as defined by 9-28-402(12). **Ark. Code Ann. §9-27-334(a)(2)(B) (Supp. 2007); Ark. Code Ann. §9-27-355(b)(1)(A) (Supp. 2007).**
- (5) If the court grants custody of a juvenile to a relative or other person the juvenile shall not:
 - (a) be placed in the custody of DHS while remaining in the relatives home, and
 - (b) the juvenile shall not be removed from the custody of the relative or other person, placed in the custody of DHS and then remain or return to the home of the relative or other person while remaining in the custody of DHS. **Ark. Code Ann. §9-27-355(b)(1)(A) (Supp. 2007).**
- (6) If the court transfers custody to DHS the court shall issue orders regarding educational issues of the juvenile including determining if the parent or guardian :
 - (a) shall have access to the juvenile's school records
 - (b) has access to school records is entitled to information on the child's placement (name and address of foster parent or provider), and
 - (c) may participate in school conferences or similar activities. **Ark. Code Ann. §9-27-103(b)(6)(A) (Supp. 2007).**
- (7) If custody transferred to DHS the circuit court may appoint a person to consent to an initial evaluation and serve as a surrogate parent pursuant to the Individuals with Disabilities Education Act (IDEA). **Ark. Code Ann. §9-27-103(b)(6)(B) (Supp. 2007).**

In all custody cases, the primary consideration is the welfare and best interest of the children involved; all other considerations are

secondary; the chancellor must utilize to the fullest extent all powers of perception in evaluating witnesses, their testimony, and the best interest of the children; in no other kind of case does the superior position, ability, and opportunity of the chancellor to observe the parties carry as much weight as in those cases involving minor children; juvenile courts are a division of chancery, and therefore the same standards of review apply.

*Where, among other things, the juvenile court credited a clinical psychologist's testimony that he did not believe that appellant had the ability to care for all three of her sons for an extended period of time, and the juvenile court determined that the evidence showed that the appellee fathers provided safe, nurturing environments and that they were the more stable custodians for the boys, the appellate court concluded that a review of the entire record demonstrated that the trial judge's refusal to restore custody to appellant was not clearly erroneous. **Lowell v. Lowell**, 55 Ark. App. 211, 934 S.W.2d 540 (1996).*

*The juvenile division of chancery court, having found a child to be dependent or neglected, has the authority to make an award of custody of the child between competing parents. **Nance v. Arkansas Dep't. of Human Servs.**, 316 Ark. 43, 870 S.W.2d 721 (1994).*

*Appellants alleged error by trial court in failing to return children to parents at conclusion of initial dependency-neglect hearing. The Court held the issue was rendered moot on appeal by the return of the children after the hearing was continued at appellants' suggestion, and the action was dismissed. **Peeks v. Arkansas Dept. of Human Servs.**, 304 Ark. 172, 800 S.W.2d 428 (1990).*

4. Parent Training

- a. Order that the parent(s) or guardian(s) of the juvenile attend a parental responsibility training program, if available.
- b. The court may make reasonable orders requiring proof of completion of such training program within a certain time period

and payment of a fee covering the cost of the training program.

5. Contempt Sanctions

- a. The court may provide that any violation of its orders shall subject the parent, both parents, custodian, guardian or the juvenile to contempt sanctions. **Ark. Code Ann. §9-27-334 ©) (Supp. 2007).**
- b. No court may commit a juvenile to DYS solely for criminal contempt. **Ark. Code Ann. §9-27-335 (g) (Supp. 2007); Ark. Code Ann. §9-28-208(a)(2) (Supp. 2007).**

JUDGES' NO REUNIFICATION HEARING CHECKLIST

A.C.A. §9-27-327; -329; -303; -337

Purpose:

To determine whether DHS should provide reunification services to the parent. This hearing is also referred to as "fast track" to accelerate permanency for a child that does not include reunification home with the parents.

Time Constraints:

- ☉ DHS, the attorney ad litem, or the court can make a "no reunification services" recommendation at any time following a d-n adjudication. A.C.A. §9-27-327(a)(2)(A)(i), -327(2)(C-D); A.C.A. §9-27-329(c)(2)(A), -329(c)(4); §9-27-337(d)
- ☉ DHS, the attorney ad litem, or the court shall provide written notice to the defendants of a recommendation of no reunification services at least 14 calendar days before the hearing. A.C.A. §9-27-327(a)(2)(A)(ii); -329(c)(2)(B)
- ☉ Court shall conduct and complete the hearing within 50 days of the date of written notice; however, the court upon good cause shown may continue the hearing an additional 20 days A.C.A. §9-27-327(a)(2)(E)(i); -329(c)(5)(A)
- ☉ Upon a no reunification finding, the court shall hold a Permanency Planning Hearing within 30 days of the determination. A.C.A. §9-27-327(a)(2)(E)(i)(b)(ii); -329(c)(5)(C)
- ☉ Nothing shall prevent the state from filing a petition for termination, guardianship, or permanent custody prior to any hearing. A.C.A. §9-27-338(b)(1)

Notice:

Shall identify, in sufficient detail to put the family on notice of the grounds for no reunification services and shall be provided at least 14 days prior to hearing. A.C.A. §9-27-327(a)(2)(A)(ii-iii); -329(c)(2)(B-C)

Best Practice: Judge should review motion to see if it is in sufficient detail, and, if proven, would result in a finding of no-reunification services for the parents. If the motion is sufficient, the judge may schedule a pre-trial conference with attorneys to ensure all parties entitled to counsel have counsel, share witness list, ensure that exhibits have been shared with all parties, and determine how much time is needed to schedule hearing.

At the hearing, explain the purpose of the No Reunification Hearing. Don't allow attorneys to re-adjudicate the dependency-neglect case; make them prove the grounds for no-reunification. Ensure that all parties are identified and have counsel or that counsel is properly waived. Ensure that all witnesses are sworn on the record. Judge should ensure that foster parents, relative caregivers and pre-adoptive parents have opportunity to be heard if not called as a witness

Present at Hearing:

- ✓ Judge
- ✓ Parties, including children, unless excused for good cause by court
- ✓ Attorneys for all parties and CASA if appointed
- ✓ CASA volunteer, if appointed
- ✓ Foster parents, relative caregivers, and pre-adoptive parents if identified
- ✓ Investigator, case worker, and relevant witnesses
- ✓ Court Reporter

No Reunification Grounds:

The parent has:

- ① subjected the child to aggravated circumstances as defined in 9-27-303(6) including:
 - ▶ abandonment;
 - ▶ chronic abuse;
 - ▶ subjected to extreme or repeat cruelty;
 - ▶ sexual abuse;
 - ▶ child who has been removed from the custody of the parent and placed in foster care or custody of another person 3 times in the last 15 months; and

JUDGES' NO REUNIFICATION HEARING CHECKLIST

- ▶ judicial determination that there is little likelihood that services will result in successful reunification.
- ② committed murder or voluntary manslaughter of any child;
- ③ aided, abetted, conspired or solicited such a murder or voluntary manslaughter;
- ④ committed felony battery or assault resulting in serious bodily injury to any child;
- ⑤ had parental rights involuntarily terminated as to a sibling of the child; or.
- ⑥ abandoned an infant as defined in 9-27-303(1) A.C.A. §9-27-303(46)(C)

Burden of Proof:

The burden is on the party requesting a no reunification finding is clear and convincing evidence
A.C.A. §9-27-303(46)(C); A.C.A. §9-27-327(a)(2)(B)(ii); - §329(c)(5)(B)

Court Findings:

➤ Court should enter findings as to the child's best interest; and

➤ Court should enter findings of fact and conclusions of law based on the statutory grounds as to whether or not DHS should be relieved of providing reunification services to the parents.

Best Practice: The court should make specific findings of fact and conclusions of law based on the statutory grounds.

If the court grants the no reunification motion, the court shall hold a Permanency Planning Hearing within 30 days and explain to the parties the purpose of the next hearing.

E. No Reunification Efforts Hearings

1. Purpose

To determine whether or not DHS should provide reunification services to reunite a child with his/her family. Ark. Code Ann. §9-27-327(a)(2)(A)(I)(Supp. 2007); Ark. Code Ann. §9-27-329(2)(B)(i) (Supp. 2007); Ark. Code Ann. §9-27-337(d) (Supp. 2007).

2. Time Constraints

- a. DHS, attorney ad litem, or court may make a “no reunification efforts” recommendation at any time following the adjudication. Ark. Code Ann. §9-27-327(a)(2)(A)(i) and (2)(D) (Supp. 2007); Ark. Code Ann. §9-27-329(c)(2)(A) (Supp. 2007); Ark. Code Ann. §9-27-337(d) (Supp. 2007).
- b. The court shall determine whether the “no reunification” request shall be heard immediately after the adjudication hearing or in a separate disposition hearing. Ark. Code Ann. §9-27-327(a)(2)(c) (Supp. 2007); Ark. Code Ann. §9-27-329(c)(3) (Supp. 2007).
- c. The court shall conduct and complete a hearing on a “no reunification efforts” request within 50 days of the date of written notice to the defendants and shall enter an order determining whether or not reunification services shall be provided. Ark. Code Ann. §9-27-327(a)(2)(E)(i)(a) (Supp. 2007); Ark. Code Ann. §9-27-329(c)(2)(C)(5)(Supp. 2007).
- d. Upon good cause shown, the hearing may be continued for an additional 20 days. Ark. Code Ann. §9-27-327(a)(2)(E)(i)(b) (Supp. 2007).
- e. Upon determination that no reunification efforts shall be provided, the court shall hold a permanency planning hearing within 30 days after the determination. Ark. Code Ann. §9-27-327(a)(2)(E)(ii) (Supp. 2007); Ark. Code Ann. §9-27-329(c)(5)(c) (Supp. 2007).

3. Notice

Party or court recommending “no reunification efforts” shall provide notice to the defendants. Ark. Code Ann. §9-27-327(a)(2)(A)(i-ii) (Supp. 2007); Ark. Code Ann. §9-27-329(c)(2)(B) (Supp. 2007).

The notice shall:

- a. be provided to the parties at least 14 calendar days before the hearing, and
- b. identify, in sufficient detail to put the family on notice, the grounds for recommending "no reunification services." Ark. Code Ann. §9-27-327(a)(2)(A)(ii-iii) (Supp. 2007); Ark. Code Ann. §9-27-329(c)(2)(B-C) (Supp. 2007).

4. Burden of Proof

The burden is on the moving party and is based on clear and convincing evidence. Ark. Code Ann. §9-27-303(46)(c) (Supp. 2007); Ark. Code Ann. §9-27-325(h)(2)(c) (Supp. 2007); §9-27-327(a)(2)(B)(ii) (Supp. 2007); §9-27-329(c)(5)(c) (Supp. 2007).

5. Court Finding

- a. The court shall enter an order determining whether or not reunification services should be provided.
- b. Reunification efforts shall not be required if court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:
 - (1) Subjected the child to aggravated circumstances which include:
 - (a) a child being abandoned;
 - (b) a child being chronically abused;
 - (c) a child being subjected to extreme or repeated cruelty or sexual abuse;

Infant was found dependent-neglected as a result of multiple broken bones of varying ages. The trial court found that the injuries were not accidental; that one or both parents were the likely cause of the injuries; and despite the parents' denial, the X-rays indicated that the

fractures were from varying ages and they were of the type consistent with child abuse, and the radiologist findings were suspicious of trauma. While noting that the results of the test for brittle bone disease had not yet been received, the trial court found that the observation of medical personnel did not reveal symptoms of brittle bone disease. The adjudication order was not appealed. At the disposition hearing on April 7, the trial court held that the goal should be adoption.

On May 13, the court entered a no-reunification order finding that the child had been subjected to extreme and repeated cruelty, that the injuries were not accidental, that one or both parents caused the injuries, and that when received, the brittle bone test showed no abnormal findings. At this hearing the trial court denied appellant's motion to call an expert witness to testify as to alternative theories for the infant's injuries. The court ruled that res judicata applied and that expert testimony was not relevant at this stage of the proceedings. Appellants' filed a notice of appeal after the no-reunification order and the TPR order handed down on November 16, 2004.

All of appellants' issues on appeal related to the trial court's denial of expert testimony at the no-reunification hearing to refute its previous finding of child abuse by the parents. The appellate court noted that the time for appellant to present that testimony was prior to the adjudication. The appellate court held that it was not necessary to address appellant's res judicata argument because appellant failed to appeal the adjudication order. The Supreme Court made clear in the Jefferson and Lewis cases that the appellate court will not re-litigate the adjudication hearing at future hearings. The appellant could have appealed the adjudication order, but failed to do so.

*The denial to allow the expert to examine the infant only to refute the injuries of the finding of the adjudication are not permitted under Jefferson. **Neves da Rocha v. Arkansas Dep't of Human Servs.**, 93Ark. App. 366, 219 S.W.3d 616 (2005).*

(d) a determination by a judge that there is little

likelihood that services to the family will result in successful reunification; or

- (e) a child has been removed from the custody of the parent or guardian and placed in foster care or the custody of another person three or more times in the last fifteen months. **Ark. Code Ann. §9-27-303(46)(C)(i) (Supp. 2007); Ark. Code Ann. §9-27-303(6)(Supp. 2007).**
- (2) Committed murder of any child; **Ark. Code Ann. §9-27-303(46)(C)(ii) (Supp. 2007).**
- (3) Committed voluntary manslaughter of any child; **Ark. Code Ann. §9-27-303(46)(C)(iii) (Supp. 2007).**
- (4) Aided, abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter; **Ark. Code Ann. §9-27-303(46)(C)(iv) (Supp. 2007).**
- (5) Committed a felony battery or assault that results in serious bodily injury to any child; **Ark. Code Ann. § 9-27-303(46)(C)(v) (Supp. 2007).**

*The juvenile court is a court of competent jurisdiction to determine that a parent committed a felony assault that results in serious bodily injury to the child. The court reasoned that a criminal conviction is not required. **Brewer v. Ark. Dep't. Of Human Servs., 71 Ark. App. 364, 32 S.W.3d 22 (2001) (substituted opinion on grant of rehearing delivered April 25, 2001).***

- (6) Had parental rights involuntarily terminated as to a sibling of the child; or **Ark. Code Ann. §9-27-303(46)(C)(vi) (Supp. 2007).**
- (7) Abandoned an infant. **Ark. Code Ann. §9-27-303(46)(C)(vii) (Supp. 2007).**

Abandoned infant means a juvenile less than nine months of age whose parent, guardian or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant. **Ark. Code Ann. §9-27-303(1) (Supp. 2007).**

JUDGES' SIX MONTH REVIEW HEARING CHECKLIST

A.C.A. §9-27-337

Purpose:

- Court shall determine if case plan, services; and placement meet the special needs and best interest of the child.
- Court shall determine if the state has made reasonable efforts to provide family services.
- Court shall determine if the case plan is moving toward an appropriate permanency plan for the juvenile.
- Court shall determine if the visitation plan is appropriate for the parents and siblings, if separated A.C.A. §9-27-337(e)

Time Constraints:

- ⊗ Shall be held at least within six months of the original out-of-home placement and every six months thereafter while the child is in an out-of-home placement until permanency is achieved. A.C.A. §9-27-337(a)(2)(A)
- ⊗ The court may review prior to the six month review date, and any party may request such a review. It is the petitioner's duty to request court to schedule review at least 60 days prior to the required time frame. A.C.A. §9-27-337(b)(c)

Best Practice: Court should schedule the first review at the end of the adjudication/disposition hearing for a date and time specific.

- ⊗ DHS shall file a court report with the court, including a certificate of service that the report has been submitted to all parties and the CASA volunteer, if appointed, seven business days prior to the scheduled review hearing. A.C.A. §9-27-361(a)(1)
- ⊗ CASA volunteers shall provide written reports for the court and shall provide all parties or the attorney of record with a copy of the report seven business days prior to the hearing. A.C.A. §9-27-316(g)(3)(A)(iii); §9-27-361(a)(1)

- ⊗ A written order shall be filed and distributed to the parties within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner.

A.C.A. §9-27-337(e)(2)

- ⊗ All studies, evaluations, or post disposition reports shall be provided to all the parties at least 2 days prior to the review hearing. A.C.A. §9-27-327(e)(1)(B)(i)(d)(ii)(b)

Best Practice: Court needs to develop a case management system or tickler file to ensure compliance for court reports, evaluations, and hearing compliance.

Present at Hearing:

- ✓ Judge
- ✓ Parties, including children, unless excused for good cause by court
- ✓ Attorneys for the parties and CASA if appointed
- ✓ Case worker, and relevant witnesses
- ✓ Foster parents, relative caregivers, and pre-adoptive parents if identified
- ✓ Court Reporter

Best Practice: Judge should explain the purpose of the Review Hearing at the beginning of the hearing and ensure that all parties are identified and parties entitled to counsel have counsel unless properly waived. The judge should ensure that all witnesses are sworn on the record.

Issues:

- Ensure that all parties are present and represented by counsel or that counsel has been properly waived.
- Ensure that DHS provided notice of hearing to foster parents, relative caregivers, and pre-adoptive parents.
- Ensure that the foster parents, relative caregivers, and pre-adoptive parents have an opportunity to be heard if not called as a witness.

JUDGES' SIX MONTH REVIEW HEARING CHECKLIST

Issues:

- Have the parties complied with the case plan and court orders?
- Are the child's needs being met, specifically addressing whether the juveniles' health, safety, and educational needs are being met?
- Are the case plan goal, including a concurrent goal, and services still appropriate for the child and family?
- Are there any custody, support, and placement issues?
- Are the parents complying with the visitation schedule and what is the effect on the child?
- If children are separated, is DHS providing appropriate sibling visitation?
- Is the family availing themselves to DHS services?
- Are the services for the family alleviating the reason the child was removed from home or brought to the court's attention?

A.C.A. §9-27-337

Court Findings & Evidence to Consider:

In its review orders, the court shall determine and include in its orders the following:

- ① Whether the case plan, services, and placement meet the special needs and best interest of the juvenile. The juvenile's health, safety, and education shall be specifically addressed; A.C.A. §9-27-337(e)(1)(B)(i)(a)
- ② Whether the state has made reasonable efforts to provide family services; A.C.A. §9-27-337(e)(1)(B)(i)(b)
 - Court shall consider extent of compliance with case plan, including a review of the DHS' care for the health, safety, and education of the juvenile while in the out-of-home placement. A.C.A. §9-27-337(e)(1)(C)(i)

Note: This is not a IV-E reasonable efforts finding that can result in loss of funds to DHS

- ③ Whether the case plan is moving toward an appropriate permanency plan pursuant to A.C.A. §9-27-338; A.C.A. §9-27-337(e)(1)(B)(i)(c)
 - The extent of the progress toward alleviating or mitigating the cause of removal;
 - Whether the juvenile can be returned to his/her parents and whether the juvenile's health and safety can be protected if returned home; and
 - Appropriate permanency plan, including concurrent planning.
- ④ Whether the visitation plan is appropriate for the parents and the siblings, if separated. A.C.A. §9-27-337(e)(1)(B)(i)(d)

Best Practice: The judge should make specific findings as to the parties' compliance with the case plan and court orders. The judge should make specific findings as to the parents' progress towards alleviating the cause the child was removed or the reason the case was brought to the court's attention, including credibility findings as to parties.

The judge should ensure that all the parties understand what they are required to do. The judge should remind the parties that "the clock is ticking." The judge should schedule the next hearing (review and/or permanency planning) for a date and time specific.

F. Six-Month Review Hearings

1. Purpose

- a. To review a dependent-neglected or FINS case at least every six months when a juvenile is placed out of his/her home until there is a permanent order of custody, guardianship or other permanent placement or the juvenile is returned to his/her parent, guardian or custodian and the court has not discontinued orders for family services. **Ark. Code Ann. §9-27-337(a)(1) (Supp. 2007).**
- b. To review the case and determine the future status based on the juvenile's best interest. **Ark. Code Ann. §9-27-337(e)(1)(A) (Supp. 2007).**

2. Time Constraints

- a. The Review Hearing shall be held within six months after the original out-of-home placement and every six months thereafter until permanency is achieved. **Ark. Code Ann. §9-27-337(a)(2)(B) (Supp. 2007)**
 - (1) The court may require review prior to six month review date and the court shall announce the date, time, and place of the hearing. **Ark. Code Ann. §9-27-337(b)(1)(A) (Supp. 2007).**
 - (2) In all other cases it is the duty of petitioner to request court to set review hearing at least 60 days prior to the date of the required six month review and to provide all parties with reasonable notice and service in accordance with ARCP. **Ark. Code Ann. §9-27-337(b)(2)(B) (Supp. 2007).**
 - (3) Any party may request the court to review case at any time during pendency of a dependency-neglect or FINS case in which an out-of-home placement has occurred. **Ark. Code Ann. §9-27-337(c) (Supp. 2007).**
- b. Seven business days prior to a scheduled dependency-neglect review hearing DHS and the CASA, if appointed, shall file a review report including certificate of service that the report has been distributed to all parties or their attorneys and the CASA, if appointed. **Ark. Code Ann. §9-27-361(a)(1) (Supp. 2007).**
- d. A written order shall be filed and distributed by the court, or by a party or party's attorney to the parties within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-337(e)(2) (Supp. 2007).**

3. Court Reports

- a. The DHS court report shall include a summary of the parties' compliance with the court orders and case plan, including a description of services and assistance the department has provided, and recommendations to the court. **Ark. Code Ann. § 9-27-361(a)(2)(A) (Supp. 2007).**
- b. If the child has been returned home, the DHS report shall include a description of any services or requirements of the parents, including, but not limited to a safety plan to ensure the health and safety of the juvenile in the home. **Ark. Code Ann. § 9-27-361(a)(2)(B) (Supp. 2007).**
- c. The CASA report shall include but not be limited to:
 - (1) any independent factual information that he/she feels is relevant to the case;
 - (2) a summary of the parties' compliance with the court orders; and
 - (3) recommendations to the court. **Ark. Code Ann. § 9-27-361(a)(2)(B)(3) (Supp. 2007).**
- d. At the review hearing the court shall determine on the record whether the previously filed reports and addendum reports shall be admitted into evidence based on any evidentiary objections made by the parties. The court shall not consider as evidence any report, part of a report, or addendum that was not admitted into evidence. **Ark. Code Ann. § 9-27-361(a)(4)(A-B) (Supp. 2007); Ark. Code Ann. § 9-27-361(c) (Supp. 2007).**

4. Court Review Findings

- a. The court shall determine and include in its order whether:
 - (1) the case plan, services and placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety, and educational needs specifically addressed;
 - (2) the state has made reasonable efforts to provide family services;

- (3) the case plan is moving towards an appropriate permanency plan pursuant to Ark. Code Ann. §9-27-338; and
- (4) the visitation plan is appropriate for the children and parents and siblings, if separated. **Ark. Code Ann. §9-27-337(e)(1)(B) (Supp. 2007).**

b. The court's determination must be based on a full and deliberate consideration of the following:

- (1) the extent of compliance with the case plan including, but not limited to, a review of DHS' care for the health, safety, and education of the juvenile while in an out-of-home placement;
- (2) the extent of progress which has been made toward alleviating or mitigating the causes of the out-of-home placement;
- (3) whether the juvenile should be returned to the parent(s) and whether or not the juvenile's health and safety can be protected by the parent(s) if returned home;
- (4) whether the juvenile should be continued in an out-of-home placement for a specified period of time; and
- (5) whether there is an appropriate permanency plan for the juvenile pursuant to Ark. Code Ann. §9-27-338, including concurrent planning. **Ark. Code Ann. §9-27-337(e)(1)(C) (Supp. 2007).**

JUDGES' PERMANENCY PLANNING HEARING CHECKLIST

A.C.A. §9-27-338

Purpose:

Court shall finalize a permanency plan for the juvenile based on the juvenile's best interest. A.C.A. §9-27-338(a) & (c)

Time constraints:

- ⊗ The Permanency Planning Hearing shall be held no later than 12 months after the date the child enters an out-of-home placement, or no later than 30 days after the court files a no reunification services order. The permanency planning hearing shall be held annually each year thereafter to reassess the permanency plan for the juvenile. A.C.A. §9-27-338(a)(1); §9-27-328(f)
- ⊗ DHS shall file a permanency planning court report with the court, including a certificate of service that the report has been submitted to all parties and the CASA volunteer, if appointed, seven business days prior to the scheduled review hearing. A.C.A. §9-27-361(b)(1)
- ⊗ CASA volunteers shall provide written reports for the court and shall provide all parties or the attorney of record with a copy of the report seven business days prior to the hearing. A.C.A. §9-27-316(g)(3)(A)(iii)
- ⊗ A written order shall be filed and distributed to the parties by the court, or by a party or party's attorney as designated by the court, within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. A.C.A. §9-27-338(e).
- ⊗ Upon the court's determination that the goal is termination of the parental rights, DHS shall file a TPR petition within 30 days of the order. A.C.A. §9-27-338(f).
- ⊗ Nothing shall prevent the state from filing a petition for termination, guardianship, or permanent custody prior to any hearing. A.C.A. §9-27-338(b)(1)
- ⊗ If DHS failed to provide services, the court shall continue the PPH no longer than six months. A.C.A. §9-27-338(c)(2)(C)(i)

Present at Hearing:

- ✓ Judge
- ✓ Parties, including children, unless excused for good cause by court
- ✓ Attorneys for parties and CASA if appointed
- ✓ Case worker, and relevant witnesses
- ✓ Foster parents, relative caregivers, and pre-adoptive parents if identified
- ✓ Court Reporter

Best Practice: Judge should explain the purpose of the Permanency Planning Hearing at the beginning of the hearing. The judge should ensure that all parties are identified and that counsel is appointed or properly waived. The judge should make sure that all witnesses are sworn on the record. Judge should ensure that foster parents, relative caregivers and pre-adoptive parents have opportunity to be heard if not called as a witness

The Judge should ensure that all parties have received the Permanency Planning Report, updated case plan if modified or updated, and CASA report (if CASA is appointed), and any exhibits that will be introduced prior to the Permanency Planning Hearing

This is not a review hearing. At the end of this hearing, the court should enter one of the following plans based on the child's best interest and the evidence presented by the parties. The focus of this hearing should be on the child and which permanent plan is in the child's best interest.

Permanency Plans & Analysis of Proposed Plans:

The court shall enter one of the following permanency goals, listed in the order of preference, in accordance with the juvenile's best interest:

- ① **Return Home** if in the child's best interest and the child's health and safety can be adequately protected; A.C.A. §9-27-338(c)(1)
 - ✓ What are the child's needs, wishes, and best interest?
 - ✓ Review facts of case and parent's and agency's compliance with case plan and court orders

JUDGES' PERMANENCY PLANNING HEARING CHECKLIST

① Return Home

- ✓ Did the services alleviate the reasons for removal? ... What is different now?
- ✓ How has visitation gone and has there been a plan to transition home, extended visitation, overnights, weekends, to trial placement while the court continues to monitor the child's health and safety?
- ✓ What needs to happen to allow the child to return home safely?
- ✓ What has the agency done to reduce the risk or likelihood of disruption after the child returns home? What safeguards are in place to protect the child?

② TPR unless:

- 1) Relative placement and TPR is not in child's best interest,
- 2) There is a compelling reason not to terminate, or
- 3) DHS failed to provide services. A.C.A. §9-27-338(c)(2)

- ✓ What are the child's needs, wishes, and best interest?
- ✓ Is there an exception to not terminate?
- ✓ Is TPR in the child's best interest?
- ✓ What specifically are the plans for the child to be adopted?
- ✓ If TPR, are there putative parents with rights, who are entitled to notice of TPR?
- ✓ Can TPR be achieved without trial – voluntary relinquishment or mediation to avoid harm to child?

Best Practice: If TPR is selected as permanency goal the court should schedule pre-trial conference with all attorneys to ensure proper service, exhibits, and witness lists are shared prior to hearing. Also the court can determine what time is needed for the termination hearing and scheduled the hearing for enough time on the docket.

③ Guardianship A.C.A. §9-27-338(c)(3)

- ✓ What are the child's needs, wishes, and best interest?
- ✓ Are there convincing reasons that the child cannot return home or be adopted?
- ✓ Is this the best guardian for the child and does he/she have a commitment to remaining in the child's life?
- ✓ Have the home study and all background checks been completed?
- ✓ Will the guardian need financial assistance to care for the child?
- ✓ Does the guardian understand his/her rights and responsibilities?
- ✓ Will there be ongoing contact with the child's parents siblings and relatives?
- ✓ Will the guardian abide by the court's orders regarding contact with parents and relatives?
- ✓ Will the agency still provide services or provide some ongoing monitoring?

④ Permanent Custodian A.C.A. §9-27-338(c)(4)

- ✓ What are the child's needs, wishes, and best interest?
- ✓ Why is this better plan than return home, adoption, or guardianship?
- ✓ Does the child have a bond with the custodial family?
- ✓ Have the home study and all background checks been completed?
- ✓ Will the custodian need financial assistance or services to care for the child?
- ✓ Does the custodian understand his/her rights and responsibilities?
- ✓ Will there be ongoing contact with the child's parents, siblings, relatives?
- ✓ Will the custodian abide by the court's orders regarding contact with parents and relatives?
- ✓ Will this custodian make a long-term commitment to the child?

- ⑤ **Continue Reunification only if** parent is complying with case plan and court orders, is making significant measurable progress toward reunification, and reunification can occur within time frame consistent with child's developmental needs A.C.A. §9-27-38(c)(5)

JUDGES' PERMANENCY PLANNING HEARING CHECKLIST

- ✓ What are the child's needs, wishes, and best interest?
- ✓ Review facts of case and parents' and agency's compliance with case plan and court orders
- ✓ Are the services alleviating the reasons for removal and the parent needs more time to be able to maintain a safe and stable home for the child?
- ✓ What is different now compared to the parents' compliance with court orders and the case plan and the child's best interest at the last hearing?
- ✓ How has visitation gone and has there been a plan to transition home, extended visitation, overnights, weekends, to trial placement while the court continues to monitor the child's health and safety?
- ✓ What exact steps must be completed in order for the child to return home safely?
- ✓ What has the agency done to reduce the risk or likelihood of disruption after the child returns home? What safeguards need to be in place to protect the child?

⑥ Plan for Another Planned Permanent Living Arrangement (APPLA) only if:

- child cannot be reunited with family;
- another permanent plan is not available; and
- a compelling reason exists that TPR is not in the child's best interest A.C.A. §9-27-38(c)(6)(B)

APPLA shall address the quality of services, including independent living services, if age appropriate, and a plan for supervision and nurturing for the juvenile. A.C.A. §9-27-38(c)(6)(A)

- ✓ What are the child's needs, wishes, and best interest?
- ✓ Why is this a better plan than return home, adoption, guardianship, custody, or continued reunification?
- ✓ What support and independent living services are being provided to the juvenile to ensure that the juvenile will be able to transition out of foster care and be able to care for him/herself?

- ✓ What is the housing plan?
- ✓ What is the educational plan for the child?
- ✓ What is the plan for supervision and structure for the child? Does the agency have a mentor for the juvenile?
- ✓ What additional specific services will the juvenile need to transition to adulthood?

IV-E COURT FINDING REQUIRED

The court shall make a finding on whether DHS has made reasonable efforts and shall describe the efforts to finalize the permanency plan for the juvenile. Ark. Code Ann. § 9-27-338(d); § 9-27-328(f)

If a reasonable efforts to finalize the permanency plan is not made within the 12 months of the date the child comes into care, the child becomes ineligible for IV-E funding from the end of the 12th month following the date the child is considered to have entered foster care or the end of the month of the most recent judicial determination to finalize permanency was made and remains ineligible until such a determination is made. 45 CFR Sec. 1356.21(b)(2)(i)

Best Practice: Based on the Permanency Plan approved for the child, the court should schedule the next hearing for a date and time specific. The court should set clear expectations for all parties as to what needs to occur before the next hearing and explain what the next hearing will be.

G. Permanency Planning Hearing

1. Purpose

To finalize a permanency plan for the juvenile. **Ark. Code Ann. §9-27-338(a)(1) (Supp. 2007).**

2. Time Constraints

a. The Permanency Planning Hearing (PPH) shall be held:

- (1) no later than 12 months after date juvenile enters an out-of-home placement;
- (2) after a juvenile has been in an out-of-home placement for 15 of the previous 22 months, excluding trial placements with parents and time on runaway status; or
- (3) no later than 30 days after the No Reunification Hearing. **Ark. Code Ann. §9-27-338(a)(1)(A-B) (Supp. 2007).**

Appellants objection to the Permanency Hearing being held on the same day as the dependency-neglect adjudication was effectively waived when appellant agreed to having both hearings on the same day on the record. Harwell-Williams v. Arkansas Dep t of Human Servs., 36 Ark. 183, S.W. 3d __ (2006).

- b. If a juvenile remains in an out-of-home placement after the initial PPH an annual PPH shall be held to reassess the permanency plan for the juvenile. **Ark. Code Ann. §9-27-338(a)(2) (Supp. 2007); Ark. Code Ann. §9-27-328(f) (Supp. 2007).**
- c. If the court finds that DHS failed to provide services, the court should continue the PPH for no longer than six months. **Ark. Code Ann. §9-27-338(c)(2)(C)(ii) (Supp. 2007).**
- d. Seven business days prior to a scheduled dependency-neglect PPH, DHS and the CASA volunteer, if appointed, shall file a Permanency Planning Court Report with the court stating that it has been distributed to all parties and the CASA, if appointed. **Ark. Code Ann. § 9-27-361(b)(1) (Supp. 2007).**
- e. A written order shall be filed and distributed to the parties by the court, or by a party or party's attorney as designated by the court within 30 days of

the date of the hearing or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-338(e) (Supp. 2007).**

- f. Upon the courts determination that the new permanency goal is TPR, DHS shall file a TPR petition within 30 days of the PPH hearing to establish TPR as the goal. **Ark. Code Ann. §9-27-338(f) (Supp. 2007).**
- g. Nothing shall prevent the state or the AAL from filing a petition for termination, guardianship, or permanent custody prior to the PPH. **Ark. Code Ann. §9-27-338(b)(1) (Supp. 2007).**

3. Court Reports

- a. The DHS Permanency Planning Court Report shall include but not be limited to the following:
 - (1) a summary of the parties' compliance with the case plan, including the description of the services and assistance the department has provided
 - (2) a list of all the placements the juvenile has been in;
 - (3) a recommendation and discussion regarding the permanency plan including the appropriateness of the plan, a time line, and the steps and services necessary to achieve the plan including the persons responsible; and
 - (4) the location of any siblings, and if separated, a statement for the reasons for separation and any efforts if appropriate to reunite or maintain contact if appropriate and in their best interest. **Ark. Code Ann. § 9-27-361(b)(2) (Supp. 2007).**
- b. The CASA Report shall include, but is not limited to:
 - (1) any independent factual information that he or she feels is relevant to the case;
 - (2) a summary of the parties' compliance with the court orders; and
 - (3) recommendations to the court. **Ark. Code Ann. § 9-27-361(b)(3)(Supp. 2007).**
- c. At the PPH the court shall determine on the record whether the reports or addendum reports shall be admitted into evidence based on any evidentiary objections made by the parties. The court shall not consider

as evidence any report, part of a report, or addendum report that was not admitted into evidence on the record. **Ark. Code Ann. § 9-27-361(b)(4)(A-B) (Supp. 2007); Ark. Code Ann. § 9-27-361(c)(1) (Supp. 2007).**

4. Permanency Plans

- a. At the PPH, based upon the facts of the case, the court shall enter one of the following permanency goals, listed in order of preference, in accordance with the best interest of the juvenile. **Ark. Code Ann. §9-27-338(c) (Supp. 2007).**

- (1) **Return juvenile to parent, guardian or custodian** at the Permanency Planning Hearing if it is in the best interests of the juvenile and the juvenile's health and safety can be adequately safeguarded if returned home; **Ark. Code Ann. §9-27-338(c)(1) (Supp. 2007).**
- (2) **Authorize plan for termination of parent-child relationship** so that the juvenile is available to be adopted unless the:
 - (a) Juvenile is being cared for by a relative (including a minor foster child caring for his/her child in foster care) and termination of parental rights is not in the best interest of the juvenile;
 - (b) DHS has documented in the case plan a compelling reason why TPR is not in the juvenile's best interest and the court approves the compelling reason as documented in the case plan; or
 - (c) DHS has not provided services to the family of the juvenile consistent with the time period in the case plan, such services as the department deemed necessary for the safe return of the juvenile to his/her home if reunification services were required to be made to the family. **Ark. Code Ann. §9-27-338(c)(2) (Supp. 2007).**

If DHS fails to provide services in such case, the court shall continue the PPH for no more than six months. **Ark. Code Ann. §9-27-338(c)(2)(ii) (Supp. 2007).**

- (3) **Authorize a plan to obtain a guardian for the juvenile; Ark. Code**

Ann. §9-27-338(c)(3) (Supp. 2007).

- (4) Authorize a plan for a **permanent custodian**, including relatives;
Ark. Code Ann. §9-27-338(c)(4) (Supp. 2007).

Circuit Court affirmed for placing child with father at permanency planning hearing. At the permanency planning hearing the court determined that it was in the juvenile's best interest for the goal to be changed and he authorized plan for permanent placement with the juvenile's father. The court further made specific findings as to the permanency plan alternatives and why this plan was in the child's best interest. Appellant failed to demonstrate that the court erred.

Appellant argued that the trial court erred because the father failed to show a material change of circumstances to warrant the change in custody. Had this been a domestic relations case the burden would be on the father to show such a change; however, it is a FINS case and the dispositions are governed solely by the juvenile code.

*Finally, appellant argues that it was not in the juvenile's best interest to be placed with his father and that her mental evaluation was faulty and there were variations of opinion about alleged sexual abuse. Due deference to assess creditably of the witness is left the trial judge and the Court found that it was not left with a distinct and firm conviction that a mistake had been made. The trial court was affirmed on all points. **Judkins v. Arkansas Dep't of Human Servs.**, 97Ark. App. 260, ___ S.W. 3d __ (2007).*

- (5) Continue the goal of **reunification only** when:
- (a) the parent is complying with the case plan and court orders;
 - (b) the parent is making significant measurable progress towards achieving the goals in the plan and diligently working toward reunification;
 - (c) the parent can demonstrate genuine sustainable investment in completing the requirements in the case plan and following the orders of the court in order to retain

reunification as the permanency goal; and

- (d) reunification can occur within a time frame consistent with the child's developmental needs. **Ark. Code Ann. §9-27-338(c)(5)(A-C) (Supp. 2007).**

A parents' resumption of contact or overtures towards compliance with the case plan and court orders in the months or weeks immediately preceding the Permanency Hearing are insufficient grounds for retaining reunification as the permanency plan. **Ark. Code Ann. §9-27-338(c)(5)(D) (Supp. 2007).**

- (6) Authorize a plan for **another permanent planned living arrangement (APPLA)** which shall include a permanent planned living arrangement and addresses the quality of services, including but not limited to independent living services, if age appropriate and a plan for the supervision and nurturing the juvenile will receive.

APPLA shall be selected only if:

- (a) the juvenile cannot be reunited with his/her family;
- (b) another permanent plan is not available; and either
 - (i) a compelling reason exists why TPR is not in the juvenile's best interest, or
 - (ii) the juvenile is being care for by a relative and TPR is not in the juvenile's best interest. **Ark. Code Ann. § 9-27-338(c)(6) (Supp. 2007).**

5. Required Reasonable Efforts - Adoption Safe Families Act (ASFA) Findings

- a. The court shall make a finding on whether DHS has made reasonable efforts and shall describe the efforts to finalize the permanency plan for the juvenile. **Ark. Code Ann. § 9-27-338(d) (Supp. 2007); Ark. Code Ann. §9-27-328(f) (Supp. 2007).**
- b. If a reasonable efforts to finalize the permanency plan is not made within the 12 months of the date the child comes into care, the child becomes ineligible for IV-E funding from the end of the 12th month following the date the child is considered to have entered foster care, or the end of the month of the most recent judicial determination to finalize permanency was made and remains ineligible until such a determination is made. **45 CFR Sec. 1356.21(b)(2)(i).**

JUDGES' FIFTEENTH-MONTH REVIEW HEARING CHECKLIST

A.C.A. §9-27-359

Purpose:

To determine if DHS shall file a TPR petition if the juvenile has been out of the home for 15 continuous months, excluding trial placements or run-away status and the permanency planning hearing goal was either reunification or APPLA. A.C.A. §9-27-359(a)

Time constraints:

- ⌚ Hearing to be held when a juvenile has been out of the home for 15 continuous months, excluding trial placements or run-away status, and the permanency planning hearing goal was either reunification or APPLA. A.C.A. §9-27-359(a)(1)
- ⌚ A written order shall be filed and distributed to the parties by the court or by a party or party's attorney, as designated by the court, within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. A.C.A. §9-27-359(e)
- ⌚ If court approves permanency goal to terminate, DHS shall file TPR petition no later than the 15 month of the child's entry into foster care. A.C.A. §9-27-359(c)
- ⌚ If court determines that the child should remain in an out-of-home placement the court shall review the case every 6 months with an annual permanency planning hearing until permanency is achieved for the child. A.C.A. §9-27-359(d)

Present at Hearing:

- ✓ Judge
- ✓ Parties, including children, unless excused for good cause by court
- ✓ Attorneys for the parties and CASA volunteer, if appointed
- ✓ Case worker, and relevant witnesses
- ✓ Foster parents, relative caregivers, and pre-adoptive parents if identified
- ✓ Court Reporter

Best Practice: The judge should explain the purpose of the hearing at the beginning. The judge should ensure that all parties are identified and that counsel is appointed or properly waived. The judge should make sure that all witnesses are sworn on the record.

Judge should ensure that foster parents, relative caregivers and pre-adoptive parents have opportunity to be heard if not called as a witness

Court shall authorize DHS to file a TPR petition unless:

- The child is placed with a relative and TPR is not in child's best interest, or
- DHS has documented in the case plan a compelling reason why termination is not in the child's best interest and the court approves the compelling reason, or
- DHS failed to provide services. A.C.A. §9-27-359(b)(3)

Issues:

- ✓ Is TPR in the child's best interest?
- ✓ Is there an exception not to terminate?
- ✓ If allowed to file a TPR petition, does DHS have grounds for TPR?
- ✓ What is different now compared to the PPH with regard to the parents' compliance and the child's best interest?
- ✓ What specifically are the plans for the child to be adopted?
- ✓ If TPR, are there putative parents with rights? Who is entitled to notice of TPR?
- ✓ Can TPR be achieved without trial – voluntary relinquishment or mediation to avoid harm to child?

Best Practice: If TPR is selected as permanency goal the court should schedule pre-trial conference with all attorneys to ensure proper service, exhibits, and witness lists are shared prior to hearing, and adequate time is scheduled for termination hearing.

The judge should ensure that parties understand what they are specifically required to do following the hearing. The judge should schedule the next hearing for a date and time specific depending on the court's findings at this hearing.

H. Fifteenth-Month Review Hearing

1. Purpose

To determine if DHS shall file a TPR petition if the juvenile has been out of the home for 15 continuous months, excluding trial placements or run-away status, previous 22 months, and the permanency planning hearing goal was either reunification or APPLA. A.C.A. §9-27-359(a) (Supp. 2007)

2. Time Constraints

- a. When the juvenile has been out of the home for 15 continuous months, excluding trial placements and time on run-away status out of the last 22 months, the court should conduct a Fifteen Month Review Hearing. A.C.A. §9-27-338(a)(1) (Supp. 2007).
- b. A written order shall be filed and distributed to the parties by the court, or by a party or party's attorney as designated by the court, within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. A.C.A. §9-27-359(e) (Supp. 2007).
- c. If court approves permanency goal to terminate, DHS shall file TPR petition no later than the 15th month of the child's entry into foster care. A.C.A. §9-27-359(c) (Supp. 2007).
- d. If court determines that the child should remain in an out-of-home placement, the court shall review the case every six months with an annual permanency planning hearing until permanency is achieved. A.C.A. § 9-27-359(d) (Supp. 2007).

3. Court Findings

- a. The Court shall authorize DHS to file a TPR petition unless:
 - (1) The juvenile is being cared for by a relative and TPR is not in the juvenile's best interest;
 - (2) DHS has documented in the case plan a compelling reason why termination is not in the juvenile's best interest and the court approves the compelling reasons; or
 - (3) DHS has failed to provide the family services consistent with the time period in the case plan deemed necessary for the safe return of the juvenile if such services were required. A.C.A. § 9-27-359(b) (Supp. 2007).

JUDGES' TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST

A.C.A. §9-27-338 and §9-27-341

Purpose:

- ① To provide permanency in a child's life where return home is contrary to the child's health, safety, or welfare and cannot be accomplished in a reasonable period of time, as viewed from the child's perspective. A.C.A. §9-27-341(a)(3)
- ② To clear the child for permanent placement. A.C.A. §9-27-341(a)(2)

Time constraints:

- ⊕ Upon the court's determination that the goal is termination of the parental rights, DHS shall file a TPR petition within 30 days of the permanency planning hearing that establishes TPR as the permanency goal. A.C.A. §9-27-338(f)
- ⊕ If the Court determines the new permanency goal to be termination of parental rights, DHS shall file the TPR petition no later than the 15th month after the child's entry into foster care. A.C.A. §9-27-359(c)
- ⊕ The court shall conduct and complete the TPR hearing within 90 days from the date the TPR petition is filed, unless continued for good cause as articulated in the written order of the court. A.C.A. §9-27-341(d)(1)
- ⊕ A written order shall be filed by the court or by a party or party's counsel as designated by the court within 30 days of the date of the termination hearing or before the next hearing, whichever is sooner. A.C.A. §9-27-341(e)
- ⊕ After the TPR hearing, the court shall review the case at least every 6 months. The permanency planning hearing shall be held each year after the initial permanency planning hearing until permanency is achieved for that child. A.C.A. §9-27-341(f)

- ⊕ Nothing shall prevent DHS or the AAL from filing a petition for TPR prior any hearing. A.C.A. §9-27-338(b)(1)

Petitioners:

- ✓ DHS or the Attorney Ad Litem

Notice:

The petitioner shall provide the parent(s) or putative parent actual or constructive notice. A.C.A. §9-27-341(b)(2)(A)

The petitioner shall also contact the Putative Father Registry when the name or whereabouts of a putative father are unknown. A.C.A. §9-27-341(b)(2)(B)

Best Practice: Conduct a pretrial hearing with all attorneys to make sure proper notice and service has been provided to all parties, attorneys are appointed, transport orders are issued (if needed), and review sufficiency of petition if proven would result in TPR. Make petitioner plead specific facts to specific statutory grounds - no boiler plate language. Review and exchange exhibits and witness lists, determine what if anything can be stipulated to minimize issues at TPR hearing, and schedule appropriate time for TPR hearing for a date and time specific.

Present at Hearing:

- ✓ Judge
- ✓ Parties, including children, unless excused for good cause by court
- ✓ Attorneys for the parties and CASA volunteer, if appointed
- ✓ Case worker, and relevant witnesses
- ✓ Foster parents, relative caregivers, and pre-adoptive parents if identified
- ✓ Court Reporter

Burden of Proof: Clear and convincing evidence
A.C.A. §9-27-325(h)(2)(C)

JUDGES' TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST

Issues:

- ✓ Have all the parties been properly identified and served with the TPR petition?
- ✓ Ensure that DHS provided notice of hearing to foster parents or relative caregivers and pre-adoptive parents if identified. Ensure that they have an opportunity to be heard if not called as a witness.
- ✓ Ensure counsel for all parties entitled to appointment or proper waiver on the record?
- ✓ Is TPR in the child's best interest?
- ✓ Has petitioner proven at least one of the statutory TPR grounds?
- ✓ Does an appropriate permanency plan exist? What efforts have been made to place the child in an adoptive home?
- ✓ What type of visitation with relatives and siblings is appropriate?

A.C.A. §9-27-341

It is in the child's best interest and one of the following grounds:

The best interest of the child cannot be stipulated; the court must hear evidence and make specific findings as to the child's best interest and to the grounds at a TPR hearing.

- ① The child was adjudicated d-n, and has been out of home for 12 months & despite meaningful efforts to rehabilitate, conditions which caused removal have not been remedied; A.C.A. §9-27-341(b)(3)(B)(i)
- ② The child lived outside home for 12 months and parent willfully failed to support or maintain contact; A.C.A. §9-27-341(b)(3)(B)(ii)
- ③ The presumptive legal father is not biological father; A.C.A. §9-27-341(b)(3)(B)(iii)
- ④ The child was abandoned; A.C.A. §9-27-341(b)(3)(B)(iv)

- ⑤ The parent has executed consent to TPR or adoption; A.C.A. §9-27-341(b)(3)(B)(v)
- ⑥ The court has found the child to be a victim or a sibling dependent-neglected as a result of neglect or abuse that could endanger the child's life, sexual abuse or sexual exploitation perpetrated by the juvenile's parent(s) or stepparents; A.C.A. §9-27-341(b)(3)(B)(vi)
- ⑦ Subsequent to the dependency-neglect petition, other factors/issues arose which demonstrate return is contrary to child's health, safety or welfare & that despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors which prevent return to the family home; A.C.A. §9-27-341(b)(3)(B)(vii)
- ⑧ The parent is sentenced in a criminal proceeding for a period of time which would constitute a substantial period of the child's life A.C.A. §9-27-341(b)(3)(B)(viii); or
- ⑨ The parent is found by a court of competent jurisdiction to have:
 - Committed murder or voluntary manslaughter of any child;
 - To have aided, abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter;
 - Committed a felony battery or assault that results in serious bodily injury to any child;
 - Subjected the child to aggravated circumstances as defined in A.C.A. §9-27-303(6) including:
 - abandonment;
 - chronic abuse;
 - subjected to extreme or repeat cruelty;
 - sexual abuse; or
 - child who has been removed from the custody of the parent and placed in foster care or custody of another person 3 times in the last 15 months; or

JUDGES' TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST

- judicial determination that there is little likelihood that services will result in successful reunification.
- Had parental rights involuntarily terminated as to a sibling of the child;
- Abandoned an infant A.C.A. §9-27-341(b)(3)(B)(ix)

Effect of a TPR order:

A TPR order terminates the parent-child relationship and divests the parent and the child of all legal rights, powers and obligations between each other, including the right to withhold consent to adoption. A child has a right to inherit until the final adoption is entered. A.C.A. §9-27-341(c)(1)

TPR between a child and one parent does not affect the relationship between that child and the other parent if those rights were legally established and not terminated. If no legal rights have been established, a putative parent must prove significant contacts existed with the juvenile in order for the rights to attach. A.C.A. §9-27-341(c)(2)

A TPR order may authorize DHS to consent to adoption of the juvenile. A.C.A. §9-27-341(c)(3)

A TPR order does not preclude adoptive parents from allowing contact between the adoptive child and birth siblings or other birth family members. A.C.A. §9-27-341(c)(4)

Sibling visitation shall not terminate if the adopted child was in the custody of DHS and had a sibling who was not adopted by the same family and before the adoption the circuit court in the dependency-neglect case or FINS case determined that it was in the best interest of the siblings to continue visitation and ordered sibling visitation to continue after the adoption. A.C.A. §9-9-215(c)

Best Practice: *This record should stand on its own. Make detailed findings of fact (compliance and credibility findings are key) and conclusions of law in your order. This is the "death of a family" and should be able to withstand any appeal. Make sure your written order is clear as to your findings of fact and conclusions of law regarding the child's best interest and the statutory grounds.*

If you issue a termination ruling from the bench but need time to craft your written order, wait to schedule the post TPR review after the parents have left the courtroom.

Also consider the need for a last visitation with a therapist so that the children and parents have an opportunity, in a therapeutic setting, to say goodbye.

I. Termination of Parental Rights (TPR) Hearing

1. Purpose

- a. To be used only when DHS is attempting to clear a juvenile for permanent placement. **Ark. Code Ann. §9-27-341(a)(2) (Supp. 2007).**
- b. To provide permanency in a juvenile's life where a return home is contrary to the juvenile's health, safety or welfare and it appears from the evidence that the return home cannot be accomplished in a reasonable period of time, as viewed from the juvenile's perspective. **Ark. Code Ann. §9-27-341(a)(3) (Supp. 2007).**
- c. A parent's resumption of contact or overtures toward participating in the case plan or following the orders of the court following the PPH and preceding the TPR Hearing is an insufficient reason not to terminate. **Ark. Code Ann. §9-27-341(a)(4)(A) (Supp. 2007).**

The Supreme Court noted the following evidence supporting the trial court's decision to terminate appellant's parental rights. Her recent steps prior to the termination hearing to gain employment and housing did not negate her history of instability. When appellant did work it was with a temporary agency, and at the time of the termination hearing she was laid off. Appellant never provided documented evidence of support payments for the children despite the trial court's request. Appellant married a convicted sex offender, who as a condition of his parole could not have any unsupervised contact with minors, after her four minor children were placed in foster care. Appellant failed to maintain her counseling and medication management for depression.

*The Supreme Court stated the bottom line is that the evidence was clear that these children needed a permanent and stable environment. Although the appellant began to make some progress, the children had been out of the home for two years and "her compliance was at the eleventh hour. It was not an error for the trial court to disregard the progress she had made immediately before the termination hearing. This progress did not outweigh other evidence demonstrating a failure to comply and remedy the situation that caused the children to be removed. **Camarillo-Cox v. Arkansas Dep't of Human Servs., 360 Ark. 340, 201 S.W.3d 391 (2005).***

*Termination of parental rights was pursued because a return of the child to the appellant's home would have been contrary to the child's health, safety, or welfare and because it appeared that the return could not be accomplished within a reasonable period of time. **M.T. v. Arkansas Dep't. of Human Servs., 58 Ark. App. 302, 952 S.W.2d 177 (1997).***

The intent of the TPR statute is to provide permanency in a juvenile's life where return is contrary to the juvenile's health, safety, or welfare, and it appears from the evidence that return to the family home cannot be accomplished within a reasonable time. Crawford v. Arkansas Dep't. of Human Servs., 330 Ark. 152, 951 S.W. 2d 310 (1997); Thompson v. Arkansas Dep't. of Human Servs., 59 Ark. App. 141, 954 S.W. 2d 292 (1997).

2. Time Constraints

- a. If the court determines that the permanency goal is TPR at the PPH, DHS shall file a TPR petition within 30 days of the PPH hearing. **Ark. Code Ann. §9-27-338(f) (Supp. 2007).**

Termination upheld where appellants argued that the court failed to have a permanency planning hearing within 30 days of the order of no reunification services. DHS provided notice and petitions of its intent to seek dependency-neglect adjudication, a no-reunification services order, and to terminate parental rights. DHS requested that it be allowed to set all the hearings on the same day. The trial court conducted all of these hearings on the same day, including a permanency planning hearing. Appellant was provided proper notice and due process. Phillips v. Arkansas Dep't of Human Servs., 85 Ark. App. 450, 158 S.W. 3d 691 (2004).

- b. If court approves permanency goal to TPR at the Fifteenth-Month Hearing, DHS shall file TPR petition no later than the 15th month of the child's entry into foster care. **A.C.A. §9-27-359(c) (Supp. 2007).**
- c. Court shall conduct and complete TPR hearing within 90 days from the date TPR petition is filed, unless continued for a good cause as articulated in the written order of the court. **Ark. Code Ann. §9-27-341(d)(1) (Supp. 2007).**

Continuances at the termination hearing are not permitted under Jefferson. Neves da Rocha v. Arkansas Dep't of Human Servs., 93 Ark. App. 366, 219 S.W. 3d 660 (2005).

The trial court's findings constituted more than clear and convincing evidence to terminate parental rights. The only other adverse ruling of the trial court was the denial of the motion for a continuance. The granting or denial of a continuance is in the sound discretion of the trial court and the court should consider the following factors:

1. *The diligence of the movant;*

2. *The probable effect of the testimony at trial;*
3. *The likelihood of procuring the witnesses' attendance in the event of the postponement;*
4. *The filing of an affidavit, stating not only what facts the witness would prove but what the appellant believes to be true; and*
5. *The appellant must show prejudice from denial. Green v. State, 354 Ark. 210, 128 S.W.3d 563 (2003).*

The attorney requesting the continuance was not diligent because she did not request the continuance until the day of the trial and her client was not prejudiced because she was able to participate in the hearing via telephone. TPR affirmed and counsel's motion to withdraw granted. Smith v. Arkansas Dep't of Human Servs., 93 Ark. App. 395, ____ S.W.3d ____ (2005).

- d. A written order shall be filed by the court or by a party or party's counsel as designated by the court within 30 days of the date of the termination hearing or before the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-341(e) (Supp. 2007).**

Appellant argued that the trial court's termination was clearly erroneous; that the order should be vacated because it was not filed within 30 days. The court did not lose jurisdiction because the order was not filed within 30 days from the date of the hearing. Wade v. Arkansas Dep't of Human Servs., 337 Ark. 353, 990 S.W. 2d 509 (1999).

- e. After TPR order is filed, the court shall review the case at least every three months when the goal is adoption and in other cases every six months until permanency is achieved for that juvenile. **Ark. Code Ann. §9-27-341(f) (Supp. 2007).**
- f. A Permanency Planning Hearing is not a prerequisite to the filing of a TPR petition or for the court's consideration of a TPR petition. **Ark. Code Ann. §9-27-341(b)(1)(B) (Supp. 2007).**
- g. The court shall not transfer any case in which a TPR petition has been filed until the court takes final action on the petition. **Ark. Code Ann. §9-27-307(b)(2) (Supp. 2007).**

3. Notice

- a. The petitioner shall provide the parent(s) or putative parent actual or constructive notice of hearing to terminate parental rights. **Ark. Code Ann. §9-27-341(b)(2)(A) (Supp. 2007).**

TPR affirmed. Appellant first argued that the trial court erred because the petitioner did not provide notice that a TPR hearing would be conducted at the adjudication hearing. However, the appellants did not preserve this issue for appeal because they did not appeal the adjudication order. Sowell v. Arkansas Dept. of Human Servs., 96 Ark. App. 325, ___ S.W. 3d___ (2006).

- b. In addition to constructive notice, the petitioner shall check the putative father registry if the name or whereabouts of the putative father are unknown. **Ark. Code Ann. §9-27-341(b)(2)(B) (Supp. 2007).**

4. TPR Petition

- a. TPR is a remedy available only to DHS or the attorney ad litem. **Ark. Code Ann. §9-27-341(a)(1)(A) (Supp. 2007).**

Termination of parental rights is a remedy available only to DHS (and to an attorney ad litem beginning in 1997 after case decided) and not to private litigants; therefore, the right of dismissal accrues to DHS as the petitioner, and not to a parent. M.T. v. Arkansas Dep't. of Human Servs., 58 Ark. App. 302, 952 S.W.2d 177 (1997).

- b. The court may consider a TPR petition if there is an appropriate permanency placement plan for the juvenile. **Ark. Code Ann. §9-27-341(b)(1)(A) (Supp. 2007).**

The termination statute does not require that termination of parental rights be a predicate to permanent placement, but only that DHS shall attempt to clear the juvenile for permanent placement when parental rights are terminated. M.T. v. Arkansas Dep't. of Human Servs., 58 Ark. App. 302, 952 S.W.2d 177 (1997).

5. Burden of Proof

A TPR order shall be based upon a finding by clear and convincing evidence. **Ark. Code Ann. §9-27-341(b)(3) (Supp. 2007); Ark. Code Ann. §9-27-**

325(h)(2)(c) (Supp. 2007).

Appellant argued that DHS failed to meet the burden of proof required by the Indian Child Welfare Act (ICWA). The trial court correctly found that DHS met all the necessary elements of the case beyond a reasonable doubt as required by ICWA. Burks v. Arkansas Dept. of Human Servs., 76 Ark. App. 71, 61 S.W.3d 184 (2001).

Grounds for termination of parental rights must be proven by clear and convincing evidence, and the question on appeal is whether the chancellor's finding that the disputed fact was proved was clearly erroneous. Due regard is given to the trial court's ability to judge the credibility of witnesses. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made based on the entire evidence. Posey v. Arkansas Dept. Of Human Servs., ___ Ark. ___ (06-1274, September 12, 2007), App. 195, 85 S.W. 3d 558 (2002); Conn v. Arkansas Dept. Of Human Servs., 79 Ark. App. 195, 85 S.W. 3d 558 (2002); Moore v. Arkansas Dep't. of Human Servs., 333 Ark. 288, 969 S.W. 2d 186 (1998); Donna S. v. Arkansas Dep't. of Human Servs., 61 Ark. App. 235, 966 S.W. 2d 919 (1998); Crawford v. Arkansas Dep't. of Human Servs., 330 Ark. 152, 951 S.W. 2d 310 (1997); Thompson v. Arkansas Dep't. of Human Servs., 59 Ark. App. 141, 954 S.W. 2d 292 (1997); M.T. v. Arkansas Dep't. of Human Servs., 58 Ark. App. 302, 952 S.W. 2d 171 (1997).

The U.S. Supreme Court held that before a state may sever the rights of parents in their natural child, Due Process requires that the state support its allegations by at least clear and convincing evidence. Santosky v. Kramer, 455 U.S. 745 (1982).

6. TPR Evidence

TPR affirmed. The appellant failed to appear for the termination hearing and later filed this appeal arguing, first, that the trial court erred in terminating his parental rights by default. Court found that the record revealed that, although the trial court granted a motion for default judgment, evidence was properly taken and reviewed at the hearing, and so a default judgment was not rendered. Court found that the decision to terminate did fully take into consideration the appellant's fundamental rights as a parent and did safeguard the appellant's constitutional protections, as well as to determine the children's best interest. Osborne v. Arkansas Dep't of Human Servs., 98 Ark. App. 129, ___ S.W. 3d ___ (2007).

The trial court was upheld in denying an expert to examine the infant only to refute the injuries of the finding of the adjudication after the adjudication

order, which was not appealed. This is not permitted under Jefferson. Neves da Rocha v. Arkansas Dep't of Human Servs., 93 Ark. App.316, 219 S.W.3d 660 (2005).

Under the rules of appellate procedure, specifically Ark. R. App. P. Civ. 2(c)(3), the review of the record for adverse rulings is limited to the termination hearing, because a party is entitled to appeal final orders from the adjudication, review, and permanency planning hearings.

However, a conscientious review of the record under Linker-Flores II requires the Court to examine all evidence from all hearings and proceedings in the case when the trial court takes judicial notice and incorporates by reference into the record at the termination hearing all pleadings and testimony in the case that occurred before the termination hearing.

Under Ark. Sup. Ct. R. 4-3(j), no-merit briefs in termination of parental rights cases shall include an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. Lewis v. Arkansas Dep't of Human Servs., 364 Ark. 243, 217 S.W.3d 788 (2005).

Termination upheld where appellants' argued that the trial court failed to have a permanency planning hearing within 30 days of the order of no reunification services. DHS provided notice and petitions of its intent to seek a dependency-neglect adjudication, a no-reunification services order, and to terminate parental rights. DHS requested that it be allowed to set all the hearings on the same day. The trial court conducted all of these hearings on the same day, including a permanency planning hearing. Appellant was provided proper notice and due process.. Phillips v. Arkansas Dep't of Human Servs., 85 Ark. App. 450, 158 S.W. 3d 691 (2004).

a. **It is in the juvenile's best interest, including but not limited to:**

- (1) the likelihood the juvenile will be adopted if the TPR petition is granted; and

TPR upheld based on clear and convincing evidence where trial court found that termination was in the children's best interests and that the children were adoptable. Appellant argued that the court erred in finding that the children were likely to be adopted since they were 11 and 15 years old and had emotional problems. Appellant argued that there are documents that

support her claim but they were not abstracted. The caseworker testified at the termination hearing that she believed that the children would be adopted and that there was a possibility for them to be adopted together. Cobbs v. Arkansas Dep't of Human Servs., 87 Ark. App.188, __S.W. 3d __ (2004).

The trial court did not improperly consider the child's wishes to be adopted by her foster parents as a controlling factor in the decision to TPR. Jefferson v. Arkansas Dep't of Human Servs., 356 Ark. 647, 158 S.W. 3d 129 (2004).

- (2) *the potential harm specifically addressing the effect of the health and safety of the juvenile caused by returning the child to the custody of the parents or the putative parent. Ark. Code Ann. §9-27-341(b)(3)(A) (Supp. 2007).*

Termination upheld where trial court found that each parent as either an offender or as an accomplice committed a felony battery against another child that resulted in the child's death. Todd and Nelson v. Arkansas Dep't of Human Servs., 85 Ark. App. 174, 151 S.W. 3d 315 (2004).

Appellants appealed the termination of parental rights arguing that the trial court erred in finding the termination in the children's best interest because there was not clear and convincing evidence of potential harm to the children if they continued contact with the parents.

Note: Act 1990 of 2005 changed potential harm of to continued contact to return home to parents.

Risk of harm is a factor for the court to consider in its best interests analysis. There was sufficient evidence presented as to the child's best interest and evidence that demonstrated potential harm that might result if the parents had continuing contact including, unstable housing, failure to support the children, and continued drug use. In addition, there were at least three separate statutory grounds for termination in this case. Carroll v. Arkansas Dep't of Human Servs., 85 Ark. App. 255, 148 S.W. 3d 780 (2004).

TPR reversed because parties stipulated to child's best interest and no evidence presented to the court. Ark. Code Ann. §9-27-341(b) requires that an order terminating parental rights must be based upon clear and convincing evidence that it is in the child's best interest and that one of

the TPR grounds are proven. Although the trial court's order recited that it was contrary to the child's best interest to return home and that the TPR was in her best interest, there was no evidence presented that would support such a finding. The only evidence submitted at the hearing was a stipulation concerning an earlier termination of a sibling. Since only one of the two grounds of the statute was proven, the decision to terminate parental rights was clearly erroneous. Conn v. Arkansas Dept. Of Human Servs., 79 Ark. App. 195, 85 S.W. 3d 558 (2002).

TPR upheld circuit court finding of best interest with strong evidence that the children would be adopted and that there was potential harm to the children if they remained in their father's custody. Posey v. Arkansas Dept. Of Human Servs., ___ Ark. ___, ___ S.W. ___ (06-1274, September 12, 2007).

TPR upheld circuit court's finding where trial court made specific findings of fact of the child's best interest including that return home would be harmful, that the child was very adoptable, and he was stable and thriving in his foster home. The trial court also noted the six year history with this family and that the child, age 11, expressed his wishes to not be returned to or have any contact with his father. Latham v. Arkansas Dept. Of Human Servs., 99 Ark. 25, ___ S.W. 3d ___ (2007).

- (3) The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision whether it is in the juvenile's best interest to terminate parental rights. Ark. Code Ann. §9-27-341(b)(4)(B) (Supp. 2007).

TPR upheld based on best interest and aggravated circumstances. Appellant argued that there was not enough evidence on the adoptability of the children and it was not in their best interest to terminate parental rights. The Court noted its previous holding that the trial court shall consider all the factors relating to best interest and evidence must be by clear and convincing evidence that termination is in the best interest of the child. McFarland v. Arkansas Dept. of Human Servs., 91 Ark. App. 323 (2005). There was no error in the trial court's determination that it was in the children's best interest to terminate parental rights. Davis v. v. Arkansas Dep't of Human Servs., 98 Ark. App. 275, ___ S.W. 3d ___ (2007).

Circuit Court reversed on termination that was fast tracked based on prior sibling termination based on parent's drug addiction. Parents of infant had lost prior child due to drug addiction and then a second child was born with drugs in the infant's system. Both parents failed to submit to hair follicle test ordered by the court. The AAL filed motion for no reunification services which ultimately led to TPR.

The Court of Appeals found that there was no evidence that drug treatment would not be successful. The Court relied on Conn v. Arkansas Dep't of Human Servs., 79 Ark. App. 195 (2002) holding that the trial court erred in finding that it was in the child's best interest to find that prior termination was a sufficient ground for TPR. Ivers v Arkansas Dep't of Human Servs., 98 Ark. App. 57, __S.W. 3d __ (2007).

Note: Under the Adoption Safe Families Act (ASFA)effective November 1997 an involuntary termination as to another sibling is a ground to fast track a case and a ground for termination of parental rights. This federal law has been adopted into state law as well. Factors of best interest are separate from TPR grounds. Best interest and a TPR ground must be proven by clear and convincing evidence to terminate best interest. In Conn, the trial court was reversed for allowing a stipulation as to the child's best interest. In Conn, the appellate court stated that the trial court must be presented evidence and make findings as to the best interest of the child in a termination hearing.

b. One or more of the following grounds:

- (1) The juvenile has been adjudicated dependent-neglected and has continued outside of the custody of the parent for 12 months, despite a meaningful effort by DHS to rehabilitate the home and correct conditions which caused removal, and those conditions have not been remedied by the parent. **Ark. Code Ann. §9-27-341(b)(3)(B)(i)(a) (Supp. 2007).**

It is not necessary that the 12-month period referenced in this subdivision immediately precede the filing of the petition for TPR, or that it be for 12 consecutive months. **Ark. Code Ann. §9-27-341(b)(3)(B)(i)(b) (Supp. 2007).**

TPR upheld. Circuit Court acknowledged that appellant had completed anger-management and substance abuse classes in prison, had filed for divorce, and was employed; however at the time of the TPR hearing appellant still did not have any means to care for his child despite six year case history with family. Latham v. Arkansas Dept. Of Human Servs., 99 Ark 25, __ S.W. 3d __ (2007).

TPR upheld based on finding that other factors arose that demonstrated that return home would be contrary to the child's health, safety, and welfare. Appellant was incapable of remedying the conditions that caused removal and had subjected the child to aggravated circumstances. The one-month old infant came into care as a result of a spiral fracture. DHHS provided intensive services for 14 months and the appellant could only care for the child for 2-3 hours with her mother. Appellant had limited intellectual and mental capacity and physical disabilities, which impaired her ability to care for her child. The trial court also found that it was in the child's best interest for termination of parental rights and that the child was likely to be adopted.

The Court found that the appellant was willing to be the parent her child need, but was unable to be the parent on her own. "Appellants' rights had to yield to the best interest of the child." Meriweather v. Arkansas Dep't of Human Servs., 98 Ark. App. 328, __ S.W. 3d __ (2007).

TPR affirmed. DHHS filed a petition to terminate parental rights based, in part, upon the child having been placed out of the home for an excess of 12 months. The appellant argued that termination was improper because the hearing was held 12 days less than 12 months after the child's removal. Court found that the record revealed that the court recognized that the hearing was held sooner than 12 months and found clear and convincing evidence to terminate. The termination order was entered 27 days after the hearing, which was more than 12 months after the child was place out of the home. Citing Ullom v. Ark. Dept of Human Servs., 340 Ark. 615, 12 S.W.3d 204 (2000), the court found that the child was out of the home for more than 12 months at the time the termination order was entered, which cured any error. Included in the termination order was a finding that the child had been subjected to aggravated circumstances; however, the appellant did not contest that finding. Riley v. Arkansas Deep t of Human Servs., 98 Ark. App. 235, __ S.W. 3d __ (2007).

Court of Appeals reversed and Circuit Court affirmed on termination of parental rights. The Court found that the record revealed that the appellant

failed to comply with the courts orders and did not provide the court with any evidence that she had remedied her drug problem that caused her children to be removed from her home. The evidence showed that she failed to address her drug problems, failed to provide meaningful proof of employment, or establish a stable living environment for her children. Long v. Arkansas Dep't of Human Servs., 369 Ark. 74, ___ S.W. 3d ___ (2007).

TPR affirmed. The children had been in and out of foster care over the last two years and the record had abundant proof of environmental neglect and that despite intensive efforts made by DHHS no appreciable change had occurred. Sowell v. Arkansas Dept. of Human Servs., 96 Ark. App. 325, ___ S.W. 3d ___ (2006).

In Knight I the trial court was reversed for terminating appellant's parental rights. DHS sought review with the Supreme Court, which was denied and then later filed a second petition for TPR, which was affirmed. Appellant did not challenge the sufficiency of the evidence or that the TPR was in the child's best interest. Appellant only argued that the trial court erred by not following the Court of Appeal's order to provide reunification services which violated her due process rights.

The appellate court noted DHS' meager attempts at providing reunification services, but noted that the children had been out of the home for over three years and neither child has seen their mother in two years. At the advice of counsel appellant refused subsequent drug screens after she tested positive when she denied using drugs. As a result, she was denied visitation. Appellant also did not maintain stable housing or employment. Knight v. Arkansas Dep't of Human Servs., 76 Ark. App. 400, ___ S.W.3d ___ (2006).

The parent counsel's motion to withdraw was granted and the TPR was affirmed. Appellant failed to remedy the situation that caused her children to come into care despite DHS' meaningful efforts to rehabilitate the home and correct the conditions that caused removal. Appellant failed to maintain stable housing, blamed her children for DHS involvement, had numerous interruptions in therapy due to multiple incarcerations, and was incarcerated again at the time of the termination hearing. She failed to protect her children from abuse and when she eventually acknowledged their abuse, one doctor testified that she had no idea whatsoever of the magnitude of the abuse. Linker-Flores v. Arkansas Dep't of Human Servs., 359 Ark. 131, 194 S.W.3d 739 (2005) (Linker-Flores I); Linker-Flores v. Arkansas Dep't of Human Servs., 364 Ark. 224, 217 S.W.3d 107 (2005) (Linker-Flores II).

T PR affirmed and attorney's motion to withdraw was granted. There was clear and convincing evidence that the children had been correctly adjudicated dependent-neglected. The children continued out of the parents' home for 17 months despite DHS efforts to provide services to remedy the situation. The father failed to rehabilitate the condition that caused removal in a reasonable amount of time and manifested an incapacity and indifference to remedy the conditions that caused removal, including failing to maintain stable housing and employment, provide child support, or comply with the orders of the court. Lewis v. Arkansas Dep't of Human Servs., 158 Ark. 129, ____ S.W.3d ____ (2005).

DHS petitioned the Supreme Court for review from the Court of Appeals' reversal of the trial court's TPR order. The Court of Appeals found that none of the grounds were supported by clear and convincing evidence and that appellant had shown significant improvement and met nearly all of her case plan requirements.

The trial court terminated appellant's parental rights based on the facts that the children had remained out of the home for more than one year and despite meaningful efforts by DHS to rehabilitate the home and correct the conditions that caused the removal, the conditions had not been remedied. The trial court also found that appellant failed to provide meaningful contact or support with the children and manifested an incapacity or indifference to remedy the conditions that caused removal.

The Supreme Court noted the following evidence supporting the trial court's decision to terminate appellant's parental rights. Her recent steps prior to the termination hearing to gain employment and housing did not negate her history of instability. When appellant did work it was with a temporary agency, and at the time of the termination hearing she was laid off. Appellant never provided documented evidence of support payments for the children despite the trial court's request. Appellant married a convicted sex offender, who as a condition of his parole could not have any unsupervised contact with minors, after her four minor children were placed in foster care. Appellant failed to maintain her counseling and medication management for depression.

The Supreme Court stated the bottom line is that the evidence was clear that these children needed a permanent and stable environment. Although the appellant began to make some progress, the children had been out of the home for two years and her compliance was at the eleventh hour. It was not an error for the trial court to disregard the progress she had made immediately before the termination hearing. This progress did not outweigh other evidence

demonstrating a failure to comply and remedy the situation that caused the children to be removed. Camarillo-Cox v. Arkansas Dep't of Human Servs., 360 Ark. 223, 201 S.W. 3d 391 (2005).

After 2.5 years of services including placing appellant in a foster home with her three children to learn proper care of her children, counseling, parenting classes, adult education and GED classes, and housing assistance referrals, the trial court found that the appellant was still non-compliant with court order and still had no visible means to support the children. Further, the children would not be able to return to the appellant within a time frame consistent with the children's developmental needs.

Appellant challenged the constitutionality of the statute requiring the permanency planning hearing to be held no later than twelve months after the date a juvenile enters foster care. She claimed it arbitrarily and capriciously placed a time limit on parental rights and denied parents their due process rights. However, appellant did not preserve the issue for appeal, nor did she notify the Attorney General as required under Ark. Code Ann. 16-111-106. It is generally reversible error when the Attorney General fails to receive notice of a constitutional attack of a statute. Maxell v. Arkansas Dep't of Human Servs., 90 Ark. 223, 205 S.W. 3d 801 (2005).

Court of Appeals reversed and trial court affirmed on termination of parental rights. Despite the numerous opportunities and assistance by DHS, the trial court found the defendant continued to be an unfit parent and there was little likelihood that she would ever be ready to be reunited with her children. The court noted that the case had gone on for more than two years and its resolution was long overdue, especially in light of the convincing evidence that appellant failed to remedy the serious problems that caused her children's removal. Trout v. Arkansas Dep't of Human Servs., 359 Ark.283, 197 S.W. 3d 486 (2004).

The termination was upheld. First, appellant argued that the court erred in failing to appoint counsel at the adjudication hearing and that if counsel was waived it was not knowingly or intelligently made. Although this challenge was not timely, the Court reviewed the remainder of the case to ensure that appellant was not deprived of fundamental fairness leading up to the termination. The Supreme Court noted that appellant was appointed an attorney following the adjudication hearing. The Court also gave no consideration to the testimony given by the appellant at the adjudication hearing because appellant was not represented by counsel.

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The TPR was based on clear and convincing evidence. The child had remained out of the home for over two years and appellant had manifested an incapacity or indifference to correct the conditions that caused removal. Jefferson v. Arkansas Dep't of Human Servs., 356 Ark. 647, 158 S.W. 3d 129 (2004).

The termination was upheld where the trial court found that parents' persistently refused to remedy the conditions in the home that caused removal, which was an intolerable dirty condition that made it unsafe for the children to reside there. For fourteen months DHS worked with the family to provide services, but the appellants failed to demonstrate that they were capable of creating a safe and clean environment for their children. Browning v. Arkansas Dep't of Human Servs., 85 Ark. App. 495, 157 S.W.3d 540 (2004).

TPR reversed where appellant had successfully completed a six-month drug treatment program at the time of the termination hearing. Appellant's children were removed from home due to drug use. Her drug tests were negative from July 2002 - December 2002. She relapsed in January 2003 and then enrolled and completed a six-month residential drug program. The trial court acknowledged appellant's progress. The court's concern about appellant's relationship with a known drug user was speculative. Further, the court was mistaken as to how long the children had been removed from the home. Knight v. Arkansas Dep't of Human Servs., 87 Ark. App. 230, 189 S.W.3d 486 (2004).

Servs., 77 Ark. App. 191, 72 S.W. 3d 533 (2002).

TPR affirmed when the court found that the children remained out of the home for more than a year, appellant suffered from paranoid schizophrenia, and that appellant was unable and unwilling to provide protection, security and care for her children. Appellant argued that DHS failed to provide appropriate reunification services and that TPR was contrary to her children's best interests. Cassidy v. Arkansas Dep't of Human Servs., 76 Ark. App. 190, 61 S.W. 3d 880 (2001).

Termination was appropriate where the child had been out of the home for 12 months and the conditions that warranted removal had not been remedied by the parent despite DHS' meaningful efforts. Ruble v. Arkansas Dep't of Human Servs., 75 Ark. App. 321, 57 S.W. 3d 233 (2001).

The evidence was sufficient to support the TPR where the appellant's children remained out of the home for more than a year and the conditions that caused removal had not been remedied. Appellant failed to take advantage of the psychiatric treatment, drug and alcohol abuse treatment and parenting classes, and had repeated positive tests indicating continued cocaine usage. Further, the Arkansas Supreme Court held that assuming that a mother had a due process right to counsel in a proceeding to terminate her parental rights, her request to waive counsel was not unequivocal and, therefore, it would have been error for the trial court to accept that waiver, because her request did not satisfy constitutional standards for the waiver of counsel. Bearden v. Arkansas Dep't of Human Servs., 344 Ark. 317, 42 S.W.3d 397 (2001).

TPR affirmed on the ground that appellant's children had been adjudicated dependent-neglected and had continued out of the home for 12 months and that, despite a meaningful effort by the department to rehabilitate the home and correct the condition that caused removal, those conditions had not been remedied by the mother where she had not managed to consistently maintain her home in a sanitary condition or to acquire a steady job which would have enabled her to provide for her children. There was also evidence that the physical abuse of the children had not ended. Dinkins v. Arkansas Dep't of Human Servs., 344 Ark. 207, 40 S.W.3d 286 (2001).

The termination order was upheld where the children had been out of her home for the majority of their lives, and evidence revealed that appellant failed to

provide a home and to demonstrate her ability to adequately parent the children after receiving rehabilitation services for over three years. Moore v. Arkansas Dep't of Human Servs., 69 Ark. App. 1, 9 S.W. 3d 531 (2000).

The termination was upheld where appellant repeatedly failed to comply with the court's orders designed to remedy the situation that caused removal. Any attempts at compliance were sporadic and inconsistent, and her pattern of inconsistent visitation continued to harm the children. Further, a finding by the trial court that appellant was unable to provide her children with the consistency and supervision that they needed was sufficient to show that she was an unfit parent.

Appellant also argued that the trial court erred in not placing her children with her mother; however, the evidence revealed that the grandmother had refused custody initially, failed to visit the children while in foster care, and indicated an unwillingness to take responsibility for her grandchildren. Baker v. Arkansas Dep't of Human Servs., 340 Ark. 42, 12 S.W.3d 201 (2000).

Appellants argued that the termination of parental rights was not based on clear and convincing evidence. Although the petition to terminate parental rights was filed before the 12 month period required by the statute, the order was entered after the child had been out of the home for 12 months. The evidence was sufficient to support a finding that DHS made meaningful efforts to rehabilitate the home. The medical evidence indicated that the child's injuries could not have occurred in the manner in which the father testified, and they were inflicted at a time when only the appellants were present with the child. Appellants demonstrated a pattern of abuse that was sufficient to show that return home would be contrary to the child's health and safety, and appellants manifested an indifference to remedy the situation. Ullom v. Arkansas Dep't. Of Human Servs. 340 Ark. 615, 12 S.W.3d 204 (2000).

TPR upheld where DHS offered services for three years; however, appellant failed to participate and failed to rehabilitate her home and the conditions which caused the removal. In addition, the trial court found that appellant's children had been out of the home over 12 months and that the appellant had failed to provide significant material support or to have meaningful contact with them. Wade v. Arkansas Dep't of Human Servs., 337 Ark. 353, 990 S.W. 2d 509 (1999).

On March 10, 1997, the trial court terminated appellant's parental rights finding that the appellant had not remedied the conditions that caused removal;

that DHS had made a meaningful effort to rehabilitate the home and correct the conditions that caused removal; that termination of parental rights was in the interest of the children; and that DHS had an appropriate placement plan for the children. There was evidence of appellant's failure to care for the special medical and psychological needs of her children, a condition that was not remedied despite DHS' meaningful efforts of parenting classes, housekeeping services and counseling. The trial court did not commit reversible error in granting the TPR petition because it was filed before both the children were out of the home for more than 12 months. Donna S. v. Arkansas Dep't. of Human Servs., 61 Ark. App. 235, 966 S.W. 2d 919 (1998).

Appellant's parental rights were terminated as to her four children; however, her appeal is limited to her two youngest children. The children were first removed in April 1990, returned home in August 1992, and removed again in July 1994. The trial court found the children to be dependent-neglected based on evidence that J.T. had been physically abused and S.T. had been sexually abused and sexually exploited. In December 1994, appellant was found guilty of raping J.T. and in March 1994, she plead nolo contendere to the rape of R.T. In September 1995, DHS filed a petition to terminate parental rights. The grounds supporting termination included that the children had been adjudicated dependent-neglected; the children had been out-of-home for 12 months despite DHS' efforts to rehabilitate the home and correct the conditions which caused the removal; and that the conditions which caused removal had not been remedied by the parent. Thompson v. Arkansas Dep't. of Human Servs., 59 Ark. App. 141, 954 S.W. 2d 292 (1997).

On August 31, 1995, the department filed a petition to terminate parental rights on the ground that the child had resided outside of the home for a period in excess of one year and, that despite meaningful efforts by DHS to rehabilitate the home and correct the conditions which caused the removal, the conditions had not been remedied to the extent that appellant was able to provide for the essential, basic, and emotional needs of the child.

The trial court's finding that the appellant did not have the capacity to be the type of parent the child needed was not clearly erroneous. T.T., who was 13 at the time of the termination hearing, testified that she wanted her mother's parental rights taken away. The mother was diagnosed as being bipolar, experiencing mental states from manic to psychotic to depression. Various professionals testified that T.T. needed an extremely stable environment and that despite the appellant's efforts, she could not give the stability that the minor child needed.

Appellant challenged the trial court's order because the court did not make a

finding of the appellant's unfitness as a parent. The proceeding to terminate parental rights is a two-step process, requiring the court to find the parent unfit and that the termination is in the best interest of the child. Although the court did not actually use the word "unfit," it clearly made a finding that the appellant was unable to be the type of parent that T.T. needed which is a sufficient finding of appellant's unfitness. J.T. v. Arkansas Dep't of Human Servs., 329 Ark. 243, 947 S.W. 2d 761 (1997).

Appellant's children had been out of her home for over a year and appellant failed to comply with the trial court's orders and to correct the circumstances that caused her children to be removed. Appellant argued that she was unable to avail herself of services while incarcerated. However, appellant failed to comply with the court's orders while incarcerated and for the brief period that she was not incarcerated. In addition, there was evidence that she directly disobeyed the court's orders regarding supervised visitation.

Imprisonment does not toll a parent's responsibilities towards his or her children. The appropriate inquiry where a parent has been ordered to comply with a court order and is incarcerated is whether the parent utilized resources available to maintain a close relationship. Malone v. Arkansas Dept. of Human Servs., 71 Ark. App. 441, 30 S.W.3d 758 (2000).

The trial court's ruling was reversed after appellant successfully argued that DHS failed to prove by clear and convincing evidence that she failed to remedy the conditions that caused the removal. She asserted that she secured a stable residence, maintained regular employment, completed a drug and alcohol assessment, submitted to random drug screens, attended her child's physical therapy and medical appointments, cooperated with parenting classes and consistently exercised her visitation. Minton v. Arkansas Dept. of Human Servs., 72 Ark. App. 290, 34 S.W.3d 776 (2000).

- (2) The juvenile has lived outside the parent's home for a period of 12 months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with juvenile. Ark. Code Ann. §9-27-341(b)(3)(B)(ii)(a) (Supp. 2007).
 - (a) Material support consists of either financial contributions or food, shelter, clothing or other necessities when such contribution has been requested by the juvenile's custodian or ordered by the court. Ark. Code Ann. §9-27-341(b)(3)(B)(ii)(c) (Supp. 2007).

- (b) To find willful failure to maintain meaningful contact, it must be shown that parent was not prevented from visiting or having contact with juvenile by juvenile's custodian or other person, taking into account distance of juvenile's placement from parent's home. **Ark. Code Ann. §9-27-341(b)(3)(B)(ii)(b) (Supp. 2007).**
- (c) It is not necessary that the 12-month period referenced in this subdivision immediately precede the filing of the petition for TPR, or that it be for 12 consecutive months. **Ark. Code Ann. §9-27-341(b)(2)(B)(ii)(d) (Supp. 2007).**

Circuit court affirmed for finding children out of the father's custody for over 12 month and that he willfully failed to maintain meaningful contact with his children during that time. Appellant was in prison six months of that time and only visited his children two times when he was not in prison. Appellant's argument that he had to move out of state to find work was not persuasive. The Court stated it is for the circuit court to determine appellant's credibility as to the reasons he did not comply with court ordered visitation. Posey v. Arkansas Dept. Of Human Servs., __ Ark. __, __ S.W. __ (06-1274, September 12, 2007).

It was an error for the chancellor to conclude that failure to support constituted an additional ground to terminate where he failed to find that the parent willfully failed to provide support and DHS conceded that it never requested support from appellant. Dinkins v. Ark. Dep't. Of Human Servs., 344 Ark. 207, 40 S.W.3d 286 (2001).

Order terminating father's parental rights to four-year-old daughter was not clearly erroneous; evidence that father never took any action to protect daughter from mother's significant usage of illegal drugs and unsafe conditions at mother's residence, that he never asked to intervene in the dependency-neglect case involving his daughter, he failed to avail himself of options to locate daughter, and had seen daughter only twice in past year was clear and convincing evidence that it was in daughter's best interest that her father's parental rights be terminated. Larscheid v. Arkansas Dep't of Human Servs., 343 Ark. 580, 36 S.W.3d 308 (2001).

TPR reversed. Appellant argued that while she did not pay the ordered child support, she did bring the child gifts and clothes, maintained a

residence where the child could live and paid court fines so that she could provide transportation for her daughter. Appellant did not willfully refuse to pay support and there was no appreciable evidence that appellant had the ability to pay even a nominal amount of support. Minton v. Arkansas Dept. of Human Servs., 72 Ark. App. 290, 34 S.W.3d 776 (2000).

Evidence was sufficient to refute the appellant's claim the he maintained meaningful contact with the child. Jones v. Arkansas Dept. of Human Servs., 70 Ark. App. 397, 19 S.W.3d 58 (2000).

Father's parental rights were terminated where there was clear and convincing evidence that the two sons lived apart from the father for twelve months and that he failed to provide monetary support for them or to make sufficient contact with them. Crawford v. Arkansas Dep't. of Human Servs., 330 Ark. 152, 951 S.W.2d 310 (1997).

- (3) The presumptive legal father is not the biological father of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the presumptive legal father. **Ark. Code Ann. §9-27-341(b)(3)(B)(iii) (Supp. 2007).**
- (4) Abandonment by the parent. **Ark. Code Ann. §9-27-341(b)(3)(B)(iv) (Supp. 2007).**
- (5) A parent has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval. **Ark. Code Ann. §9-27-341(b)(3)(B)(v) (Supp. 2007).**
 - (a) A parent may withdraw the consent for termination of parental rights within ten calendar days after it is signed by filing an affidavit with the clerk of the court in the county designated by the consent as the county in which the TPR will take place. **Ark. Code Ann. §9-27-341(g)(1)(A) (Supp. 2007).**
 - (b) No fee shall be charged and if the ten day period ends on a weekend or holiday, it may be filed the next working day. **Ark. Code Ann. §9-27-341(g)(1)(B-C) (Supp. 2007).**
- (6) The court has found the juvenile to be a victim or a sibling dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse; or sexual exploitation; any of which was

perpetrated by the juvenile's parent, parents, step-parent, or step-parents. Ark. Code Ann. §9-27-341(b)(3)(B)(vi)(a) (Supp. 2007).

Such findings by the court shall constitute grounds for immediate termination of the parental rights of one or both of the parents. Ark. Code Ann. §9-27-341(b)(3)(B)(vi)(b) (Supp. 2007).

The trial court found by clear and convincing evidence that the child was the victim of abuse that could endanger his life; that he sustained multiple fractures over a period of two to three weeks evidencing Battered Child Syndrome; and that these injuries were perpetrated by the mother and/or father. Appellants argued that the chancellor's finding was clearly erroneous. While they did not deny that the child was abused, they argued that there were others who had access to the child who could have inflicted the abuse. Gregg v. Arkansas Dep't. of Human Servs., 58 Ark. App. 337, 952 S.W.2d 183 (1997).

- (7) Subsequent to the filing of the original petition for dependency-neglect, other factors or issues arose which demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety or welfare, and that despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances, which prevent return of the juvenile to the custody of the parent. Ark. Code Ann. §9-27-341(b)(3)(B)(vii)(a) (Supp. 2007).

Appellant argued that there was insufficient evidence to terminate her parental rights. She also argued that the trial court should not consider other reasons for terminating her rights that were not consistent with the original issue that caused removal. Although the child was initially removed due to appellant's health problems other significant issues arose in the case including lack of progress with her health care and failure to follow her doctor's recommendations, lack of food in the home, her inability to provide a stable home environment, combative behavior and psychological problems, and her inability to follow the court's orders for more than two years. The trial court was correct to consider events and conditions that occurred after the juvenile was removed. Jones v. Arkansas Dep't of Human Servs., 361 Ark. 164, 205 S.W. 3d 778 (2005).

- (a) DHS shall make reasonable accommodations in accordance with the Americans with Disabilities Act to parents with disabilities to allow them meaningful access to reunification and family

preservation services. Ark. Code Ann. §9-27-341(b)(3)(B)(vii)(b) (Supp. 2007).

- (b) For purposes of this subsection, said inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies. Ark. Code Ann. §9-27-341(b)(3)(B)(vii)(c) (Supp. 2007).

Appellant failed to establish that she was entitled to ADA protection; therefore, any ADA arguments were not preserved for appeal. Appellant did not inform DHS that she was disabled and she did not identify any needed services. Termination was appropriate where the child had been out of the home for twelve months and the conditions that warranted removal had not been remedied by the parent despite DHS' meaningful efforts. Ruble v. Arkansas Dept. of Human Servs., 75 Ark. App. 321, 57 S.W.3d 233 (2001).

Appellant lacked standing to raise the issue of whether Ark. Code Ann. § 9-27-341(b)(2)(E) creates an unconstitutional presumption that the mentally ill have the inability to rehabilitate their circumstances. The trial court's order specifically stated that appellant had the mental capacity to remedy her conditions and that termination was not granted under this subsection. Appellant lacked standing to challenge the constitutionality of a statute where it was not applied in a discriminatory manner. Donna S. v. Arkansas Dep't. of Human Servs., 61 Ark. App. 235, 966 S.W. 2d 919 (1998).

Parent failed to demonstrate that her rights pursuant to the Americans with Disabilities Act, 42 U.S.C. §12132, were violated when she was denied visitation with her child and her parental rights were terminated, where parent was not denied any services on the basis of her mental disability, but denial of visitation and termination of parental rights was based solely on the best interests of the child. The A.D.A. must be subordinated to protect the rights of the child. J.T. v. Arkansas Dep't. of Human Servs., 329 Ark. 243, 947 S.W.2d 761 (1997).

- (8) The parent is sentenced in a criminal proceeding for a period of time which would constitute a substantial period of the juvenile's life. Ark. Code Ann. §9-27-341(b)(3)(B)(viii) (Supp. 2007).

Parent had been sentenced in a criminal proceeding to 40 years, a substantial period of time as set forth in the statute. Thompson v. Arkansas Dep't. of Human Servs., 59 Ark. App. 141, 954 S.W. 2d 292 (1997).

(9) The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to have:

- (a) committed murder or voluntary manslaughter of any child; or **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(1) (Supp. 2007).**
- (b) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter. **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(1) (Supp. 2007).**

Termination upheld where trial court found that each parent as either an offender or as an accomplice committed a felony battery against another child that resulted in the child's death. Both appellants challenged the sufficiency of the evidence. Appellant Nelson also argued that DHS failed to prove the grounds for termination and that the court erred in not giving her a year to remedy the situation that caused removal.

The termination was granted as to the appellant's child after Nelson's grandchild was seriously injured in their home and died as a result. Todd was charged with capital murder and after testimony from the termination hearing the court found that each parent, either as the offender or as an accomplice, had committed a felony battery against the child resulting in the child's death. The doctor's testimony concerning the time and extent of the injuries supported the court's conclusion that Nelson was in the home when the injuries were inflicted, despite her testimony otherwise. Further, the statutory ground relied on in this case allowed for immediate termination. Todd and Nelson v. Arkansas Dep't of Human Servs., 85 Ark. App. 174, 151 S.W. 3d 315 (2004).

- (c) to have committed a felony battery or assault that results in serious bodily injury to any child or to have aided or abetted, attempted, conspired, or solicited such a felony battery that results in serious bodily injury; **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(2) (Supp. 2007).**

A juvenile court is a court of competent jurisdiction to determine that a parent committed a felony assault that results in serious bodily injury to the child. A criminal conviction is not required. Brewer v. Ark. Dep't. Of Human Servs., 71 Ark. App. 364, 32 S.W.3d 22 (2001).

Nothing in this chapter shall be construed to require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed. **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(b) (Supp. 2007).**

- (d) to have subjected the child to aggravated circumstances:
 - (i) a child being abandoned; **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(3)(i) (Supp. 2007).**
 - (ii) a child being chronically abused; **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(3)(i) (Supp. 2007).**
 - (iii) a child being subjected to extreme or repeated cruelty or sexual abuse; **Ark. Code Ann. §9-27-41(b)(3)(B)(ix)(a)(3)(i) (Supp. 2007).**

TPR affirmed. Appellant argued that the circuit court erred in basing the TPR finding upon an issue unrelated to the original adjudication order and that there was insufficient evidence to support the finding that he sexually abused his child. The child was originally adjudicated dependent-neglected for educational neglect; however, during the case the child disclosed sexual abuse and testified to such at a hearing, along with other witnesses including the investigator. DHHS filed for TPR on three grounds, including aggravated circumstances subjecting a child to sexual abuse.

The appellate court noted that the circuit court made explicit findings that the child's statements were credible along with other testimony at the TPR hearing sufficient to establish that the appellant perpetrated sexual abuse. Albright v.

Arkansas Dep't of Human Servs., 97 Ark. App. 277, ___ S.W. 3d ___ (2007).

- (iv) a determination by a judge that there is little likelihood that services to the family will result in successful reunification; or Ark. Code Ann. §9-27-341(b)(3)(B) (ix)(a)(3)(i) (Supp. 2007).

Appellant argued that the trial court erred in finding that the children had been subject to aggravated circumstances; specifically that the "trial court found that there was little likelihood that services to the family would result in successful reunification." The Court found no error where the parent engaged in repeated cruelty to her children, including physical abuse and failure to protect from physical abuse from a boy-friend. Appellant was offered repeated assistance in Arkansas and Louisiana yet she failed to avail herself to services, gain employment over a two-year period, complete a GED, or comply with the case plan goals. Her lack of progress demonstrated that despite the offer of services there was little likelihood it would result in reunification with her children. Davis v. v. Arkansas Dep't of Human Servs., 98 Ark. App. 275, ___ S.W. 3d ___ (2007).

TPR affirmed based on aggravated circumstances, that there is little likelihood that the services to the family will result in successful reunification. The trial court made eight specific findings of fact to support the TPR ruling. The only challenge made by the appellants was to the finding that the mother had been in counseling for nine years to no effect, despite direct evidence that supported this finding at the TPR provided by Dr. DeYoub, the caseworker, and the mother's older daughter. Yarborough v. Arkansas Dep't. of Human Servs., 96 Ark. App. 247, ___ S.W. 3d ___ (2006).

The trial court's finding of TPR based on aggravated circumstances as to W. was affirmed

based on either the fact that appellant's rights had been involuntarily terminated as to D. (W.'s older sibling) or the determination by the judge that there was little likelihood that services to the family would result in successful reunification. The court noted that the case had gone on for more than two years and its resolution was long overdue, especially in light of the convincing evidence that appellant failed to remedy the serious problems that caused her children's removal. Trout v. Arkansas Dep't of Human Servs., 359 Ark. 283, 197 S.W. 3d 486 (2004).

- (v) a child has been removed from the custody of the parent or guardian and placed in foster care or the custody of another person three times in the last fifteen months. **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(3)(ii) (Supp. 2007).**
- (e) had parental rights involuntarily terminated as to a sibling of the child, or **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(4) (Supp. 2007).**

The trial court's finding of TPR based on aggravated circumstances as to W. was affirmed based on either the fact that appellant's rights had been involuntarily terminated as to D. (W.'s older sibling) or the determination by the judge that there was little likelihood that services to the family would result in successful reunification. The court noted that the case had gone on for more than two years and its resolution was long overdue, especially in light of the convincing evidence that appellant failed to remedy the serious problems that caused her children's removal. Trout v. Arkansas Dep't of Human Servs., 359 Ark. 283, 197 S.W. 3d 486 (2004).

Appellant argued that the trial court erred in using a previous termination of parental rights as a basis for terminating parental rights of another child because the prior termination was pending on appeal. The appellate court affirmed the trial court stating that the appellate review is de novo conducted on a record already made

and is not a trial de novo where cases are tried anew. Paslay v. Arkansas Dep't of Human Servs., 343 Ark. 580, 36 S.W. 3d 308 (2001).

- (f) abandoned an infant, as defined in Ark. Code Ann. § 9-27-303(1) (Supp. 2007). Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(5) (Supp. 2007).

7. Effect of TPR Order

- a. Terminates the parent-child relationship and divests parent and juvenile of all legal rights, powers, and obligations between each other, including the right to withhold consent to adoption. Ark. Code Ann. §9-27-341(c)(1) (Supp. 2007).

Grandmother's rights are derivative of her daughter's parental rights and as a result were terminated. Consequently, the grandmother did not have a recognized interest in the subject matter of the adoption to warrant her intervention as a matter of right. Suster v. Arkansas Dep't. of Human Servs., 314 Ark. 92, 858 S.W.2d 122 (1993).

- b. Juvenile's right to inherit from the parent is not terminated until a final order of adoption is entered. Ark. Code Ann. §9-27-341(c)(1) (Supp. 2007).

c. Termination of one parental relationship shall not affect the relationship between the other parent and the juvenile, if rights have been legally established.

- (1) If no legal rights have been established, the putative parent must prove that significant contacts existed with the juvenile in order for such rights to attach. **Ark. Code Ann. §9-27-341(c)(2)(A)(i-ii) (Supp. 2007).**
- (2) When the petitioner has actual knowledge that an individual is claiming to be or is named as the putative parent of the juvenile and the paternity of the juvenile has not been judicially determined, the individual is entitled to notice of the petition to terminate parental rights. **Ark. Code Ann. §9-27-341(c)(2)(B)(i) (Supp. 2007).**
- (3) Putative parent notice shall:
 - (a) identify the rights sought to be terminated and those which may be terminated; and
 - (b) specify that the putative parent must prove that significant contacts existed with the juvenile for the putative parent's rights to attach. **Ark. Code Ann. §9-27-341(c)(2)(B)(ii-iii) (Supp. 2007).**

d. TPR order may authorize DHS to consent to adoption of the juvenile. **Ark. Code Ann. §9-27-341(c)(3) (Supp. 2007).**

DHS testified that it was unwilling to consent to the adoption for numerous concerns which the court found were well reasoned, appropriate and in good faith." The trial court found that the appellants had not met the burden of proof by clear and convincing evidence that the adoption was in the children's best interests and stated specific facts to support this finding.

The Court of Appeals limited its review to the findings of the trial court discounting any finding based on the trial court's conclusion that it should give some deference to DHS' refusal to consent to the adoption. The factual findings of the trial court were sufficient to support a finding of the children's best interest and DHS' consent was not addressed. Luebker v. Arkansas Dep't of Human Servs., 93 Ark. App. 173, 217 S.W.3d 172 (2005).

- e. A TPR order does not preclude adoptive parents from allowing contact between an adopted child and the birth sibling or other birth family members. **Ark. Code Ann. §9-27-341(c)(4) (Supp. 2007).**
- f. Sibling visitation shall not terminate if the adopted child was in the custody of DHS and had a sibling who was not adopted by the same family, and before the adoption the circuit court in the dependency-neglect case or the FINS case determined that it was in the best interest of the siblings to continue visitation and ordered sibling visitation to continue after the adoption. **Ark. Code Ann. §9-9-215(c) (Supp. 2007).**

JUDGES' POST TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST

A.C.A. §9-27-360

Purpose:

- Court shall determine if case plan, services, and placement meet the special needs and best interest of the child.
- Court shall determine if DHS has made reasonable efforts to finalize an appropriate permanent placement for the juvenile
- Court shall determine if the case plan is moving toward an appropriate permanency plan for the juvenile. A.C.A. §9-27-360(b)

Time constraints:

- ⊗ Shall be held at least every six months following an order for termination of parental rights until permanency is achieved. A.C.A. §9-27-360(a)

Best Practice: Court should schedule first post TPR review after the termination hearing, if granted, after the parents have left the court house.

- ⊗ DHS shall file a court report with the court, including a certificate of service that the report has been submitted to all parties and the CASA volunteer, if appointed, 7 business days prior to the scheduled review hearing. A.C.A. §9-27-361(a)(1)
- ⊗ CASA volunteers shall provide written reports for the court and shall provide all parties or the attorney of record with a copy of the report 7 business days prior to the hearing. A.C.A. §9-27-361(a)(1); §9-27-316(g)(3)(A)(iii)
- ⊗ A written order shall be filed and distributed to the parties within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. A.C.A. §9-27-360(d)

Best Practice: Judge should refer to an adoption checklist to ensure that the agency is doing everything it is required to do to actively recruit and finalize an adoptive placement for the child. Stay on top of DHS' efforts to find an adoptive placement and complete all appropriate paperwork to finalize the adoption.

Present At Hearing:

- ✓ Remaining parties, agency, and child, unless excused for good cause by court
- ✓ Attorneys for parties and CASA volunteer, if appointed
- ✓ Case worker, adoption specialist and relevant witnesses
- ✓ Foster parents, relative caregivers, and pre-adoptive parents, if identified
- ✓ Court Reporter

Best Practice: Judge should explain the purpose of the Post TPR Review Hearing at the beginning and ensure that all parties are identified and witnesses are sworn on the record. Judge should ensure that foster parents, relative caregivers, and pre-adoptive parents have opportunity to be heard if not called as a witness

Issues:

- Are the child's needs being met, specifically the child's health, safety, and educational needs?
- Are the services appropriate to meet the child's best interest and needs?
- Have parties' complied with the case plan and court orders?
- What is needed to finalize adoption?

Court Findings:

In its review orders the court shall determine and include in its orders the following:

- ① Whether the case plan, services, and current placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety, and education specifically addressed; A.C.A. §9-27-360(b)(1)
- ② Whether DHS has made reasonable efforts to finalize a permanency plan for the child; and A.C.A. §9-27-360(b)(2)
- ③ Whether the case plan is moving toward an appropriate permanency plan pursuant to A.C.A. §9-27-338. A.C.A. §9-27-360(b)(3)

JUDGES' POST TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST

- ✓ Court shall consider extent of parties' compliance with case plan and court orders to finalize the permanency plan. A.C.A. §9-27-360(b)(2)

Best Practice: The judge should ensure that the parties understand what they are required to do, including DHS and the child. Require DHS to find a positive adult connection for the child that can be nurtured. The judge should schedule the next hearing for a date and time specific. If the TPR has been appealed, do not finalize the adoption until the appeal process is completed.

J. Post-Termination of Parental Rights Review Hearings

1. Purpose

- a. Court shall determine if case plan, services, and placement meet the special needs and best interest of the child;
- b. Court shall determine if DHS has made reasonable efforts to finalize an appropriate permanent placement for the juvenile; and
- c. Court shall determine if the case plan is moving toward an appropriate permanency plan for the juvenile. **Ark. Code Ann. §9-27-360(b) (Supp. 2007).**

2. Time Constraints

- a. Hearings shall be held at least six months following an order for termination of parental rights when the goal is adoption and in all other cases six months until permanency is achieved. **Ark. Code Ann. §9-27-360(a) (Supp. 2007).**
- b. DHS and a CASA, if appointed, shall file a court report with the court, including a certificate of service that the report has been submitted to all parties and the CASA volunteer, if appointed, seven business days prior to the scheduled review hearing. **Ark. Code Ann. §9-27-361(a)(1) (Supp. 2007).**
- c. A written order shall be filed and distributed to the parties within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-360(d) (Supp. 2007).**

3. Court Reports

- a. The DHS court report shall include a summary of the parties' compliance with the court orders and case plan, including a description of services and assistance the department has provided and recommendations to the court. **Ark. Code Ann. § 9-27-361(a)(2)(A) (Supp. 2007).**

- b. The CASA report shall include but not be limited to:
 - (1) any independent factual information that he/she feels is relevant to the case;
 - (2) a summary of the parties' compliance with the court orders; and
 - (3) recommendations to the court. **Ark. Code Ann. § 9-27-361(a)(2)(B)(3) (Supp. 2007).**
- c. At the review hearing the court shall determine on the record whether the previously filed reports or addendum reports shall be admitted into evidence based on any evidentiary objections made by the parties. The court shall not consider as evidence any report, part of a report, or addendum report that was not admitted into evidence on the record. **Ark. Code Ann. § 9-27-361(a)(4)(A-B) (Supp. 2007); Ark. Code Ann. § 9-27-361(c) (Supp. 2007).**

4. Court Findings

- a. At the Post-TPR Hearing the court shall determine and include in its orders the following:
 - (1) Whether the case plan, services, and current placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety and education specifically addressed; **Ark. Code Ann. § 9-27-360(b)(1) (Supp. 2007).**
 - (2) Whether DHS has made reasonable efforts to finalize a permanency plan for the child; and **Ark. Code Ann. § 9-27-360(b)(2) (Supp. 2007).**
 - (3) Whether the case plan is moving toward and appropriate permanency plan pursuant to A.C.A. §9-27-338. **Ark. Code Ann. § 9-27-360(b)(3) (Supp. 2007).**
- b. The court shall consider extent of parties' compliance with case plan and court orders to finalize the permanency plan. **Ark. Code Ann. § 9-27-360(c) (Supp. 2007).**

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I

Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (d) Appropriate jurisdictional arrangement for the care of children will be promoted.

ARTICLE II

Definitions

As used in this compact:

- (a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;
- (b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof, a court of a party state, a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;
- (c) "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons;

(d) "Placement" means:

(1) The arrangement for the care of a child in a family, free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility; and

(2) The arrangement for the care of a child in the home of his or her parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian making the arrangement for care as a plan exempt under Article VIII(a) of the compact.

(e)(1) "Foster care" means the care of a child on a twenty-four-hour-a-day basis away from the home of the child's parent or parents. The care may be by a relative of the child, by a non-related individual, by a group home, or by a residential facility or any other entity.

(2) In addition, if twenty-four-hour-a-day care is provided by the child's parents by reason of a court ordered placement and not by virtue of the parent-child relationship, the care is foster care.

(f)(1) "Priority placement" means whenever a court, upon request or on its own motion or where court approval is required, determines that a proposed priority placement of a child from one (1) state into another state is necessary because:

(A) The child is under two (2) years of age;

(B) The child is in an emergency shelter; or

(C) The court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

(2) The state agency has thirty (30) days to complete a request for a priority placement.

(3) Requests for placement shall not be expedited or given priority except as outlined in this subsection.

(g) "Home study" means a written report that is obtained after an investigation of a household and that may include a criminal background check, including a fingerprint-based criminal background check in the national crime information database and a local criminal background check on any person in the household sixteen (16) years of age and older.

ARTICLE III

Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (1) The name, date and place of birth of the child;
- (2) The identity and address or addresses of the parents or legal guardian;
- (3) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;
- (4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

(e) (1) If the home study is denied, the sending state agency shall present the home study to the juvenile division judge in the sending state.

(2) The sending state juvenile division judge shall review the home study and make specific written findings of fact regarding the concerns outlined in the home study.

(3) If the sending state juvenile division court finds that the health and safety concerns cannot be addressed or cured by services, the court will not make the placement.

ARTICLE IV

Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V

Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one (1) or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI

Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII

Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII

Limitations

This compact shall not apply to:

(a)(1) Except as provided under subdivision (a)(2) of this section, the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(2) If the guardianship is established as a prelude to a non-relative adoption or to avoid compliance with this compact, the guardian shall comply with this compact.

(b) Any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX

Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two (2) years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X

Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

POLICY VI-G**INTERSTATE COMPACT ON PLACEMENT OF CHILDREN**

02/2008

The Interstate Compact on the Placement of Children (ICPC) is used to move children in need of a foster or pre-adoptive placement, adoption across state lines or reunification with parent(s) in an orderly and timely manner. A foster child is defined as a child who has been removed from the home of his parent, guardian or custodian by a court of competent jurisdiction and whose custody has been placed with a private or public agency.

When a child requires placement for foster care or a possible adoption outside the resident state, DCFS shall use the ICPC process. Unless authorized by the ICPC, all communications with other states regarding approval of placement, progress reports, disruption of placement, or termination of the ICPC case should process through the Arkansas ICPC Office, to the Family Service Worker.

The ICPC process ensures:

- Proper extensions of authority into the receiving state.
- The sending agency can obtain home studies for proposed placements, is identified as legally and financially responsible and does not lose jurisdiction once the child leaves the sending state.
- The receiving agency can determine the placement is not "contrary to the child's interests" and that all applicable laws and policies have been followed.
- Supervision is maintained out-of-state and the sending agency receives progress reports.
- Maximum opportunity for each child to be suitably placed.
- Proper information to authorities in the receiving state.
- Effective utilization of cross-jurisdictional resources to facilitate timely foster, adoptive or permanent placements.

DCFS caseworkers should not directly contact the ICPC offices in other states, but should direct their communication to the DCFS ICPC Office. Interstate communication between field staff from the involved states is discouraged, except for the routine sharing of information, which is NOT related to case approval, progress reports, disruption or termination of placement.

The Juvenile Division of Circuit Court shall retain jurisdiction to issue orders of adoption, interlocutory or final, when a child is placed outside the state of Arkansas.

PROCEDURE VI-G1**Types of Placement Covered by ICPC**

Children placed out-of-state are to go through ICPC when one of the following placements occur:

- Foster care placements,
- Pre-adoption placements,
- Adoptive placements,
- Parent, other relative, or non-agency guardian placements.

If guardianship is established as a prelude to a non-relative adoption, the guardian shall comply with this compact. If in doubt, request clarification from the Arkansas Interstate Compact Unit, P.O. Box 1437, Slot S567 Little Rock, Arkansas, 72203-1437. Phone: (501) 682-8556.

PROCEDURE VI-G2**Types of Placement Not Covered by ICPC**

Types of placements that are not covered by ICPC include:

- Divorce or custody investigations involving home studies.
- Placement of a probationer, parolee or aftercare juvenile.
- Interstate placement of mentally ill and mentally defective children.

- Placement into a primarily educational institution.
- Runaways from Arkansas to another state or to Arkansas from another state. (See Procedure VI G17 about other compacts).
- Kidnapped children transported out-of-state.
- Visits that do not extend beyond 30 days and are not pre-placement visits.
- Placement outside the resident state when custody will be transferred to that person.

PROCEDURE VI-G3

Responsibilities of the Sending State

The sending party will:

- Provide proper notice of the intent to place using the ICPC 100A (IC Placement Request) and receive authorization from the receiving state prior to the placement.
- Work with the receiving parties to arrange the placement details (i.e., childcare payment, type of monitoring, frequency of supervisory reports, and transportation) after approval is given.
- Provide additional information when requested by the receiving state to ensure the placement is not "contrary to the interests of the child".

Any such report from another state, Indian tribe, or private agency under contract with the receiving state, shall meet all requirements imposed by the sending state for the completion of the home study before placing the child in the home. This will be done unless, within fourteen (14) days after receipt of the report, the sending state determines based on specific grounds in the report, that making a decision based on the report would be contrary to the welfare of the child.

- Notify the receiving state of the placement date and any change in the child's status by using the ICPC 100B (IC Report on Child's Placement Status).
- Retain jurisdiction over the child sufficient to determine all matters of custody, supervision, care and disposition of the child until the child is adopted, reaches majority, becomes self-supporting, or is discharged with concurrence of the appropriate authority in the receiving state.
- Retain planning and financial responsibility for the duration of the placement.

The one exception comes under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requiring that children under title IV-E adoption assistance agreements and those receiving title IV-E foster care payments will be granted Medicaid coverage in their current resident state. (See Medical Services Manual, Section 6600 to 6673.)

- Return the child to the sending state at the request of the receiving state.

PROCEDURE VI-G4

Responsibilities of the Receiving State

Within sixty (60) days after receiving a request for a home study from another state, the receiving state will, directly or by contract:

- Assess and monitor the placement to ensure compliance with applicable laws and policies of the receiving state, and that the placement is "not contrary to the interests of the child".
- Notify the sending state in writing whether or not the placement is appropriate and in the best interest of the child.

If a home study begun on or before September 30, 2008 is not completed within the sixty (60) day period due to circumstances beyond the state's control (e.g. failure of a Federal agency to provide background check results or failure of an entity to provide completed medical forms that were requested by the State at least 45 days before the end of the 60 day period), the receiving state shall have an additional 15 days beyond the original 60 days to comply with the request. This additional time will be allowed only if the receiving state documents the circumstances involved and certifies that completing the home study is in the best interests of the child.

The receiving state is not required to complete those parts of the home study within the designated time period that involve the education and training of the prospective foster or adoptive parents.

- After the child is placed and the ICPC 100B received, supervise the placement and provide or arrange for necessary services.
- Submit quarterly progress reports to the sending party. More frequent reports may be submitted on request.
- Honor and enforce lawful orders of the court of jurisdiction of the sending state unless it conflicts with Arkansas policies and/or laws.

PROCEDURE VI-G5

Placing Arkansas Children in Another State and Requesting Out-of-State Home Studies

The following are procedures to use when requesting an out-of-state home study for an Arkansas child, including placement into residential treatment facilities. Always use the child's name on the correspondence.

The sending party (county office, etc.) will compile an Interstate Compact Placement Packet consisting of:

- Cover letter or memo to the Arkansas Interstate Compact Office briefly explaining the following placement plans. It should:
 - Request an evaluation of the proposed placement, or home and explain why it is needed.
 - Clarify legal status and court/Division plans.
 - Clarify discrepancies in the request (incomplete or excluded documents).
 - Clarify financial planning (foster care payments are to be made, Medicaid coverage, etc.).
- Financial / Medical Plan – ICPC (CFS-592).
- Specify special needs of the child (medical, educational, etc.) and issues to be addressed.
- "Interstate Compact Placement Request" (ICPC-100A). (Retain one copy and include five copies with the packet.)
- Court order showing DHS custody of or court jurisdiction over the child.
- "Case Plan" (CFS-6010).
- Court order (most recent) showing that DHS has custody or the court has jurisdiction of the child (a special court order requesting a home study is not required).
- Documentation of the child's IV-E eligibility status (DCO-91).
- Complete a thorough Social Summary including background information on the child and family.
- Include the following additional information if applicable:
 - psychological testing reports,
 - counseling reports,
 - school reports / records,
 - medical records / reports,
 - other appropriate reports/documents.

Send packet to Administrator, Interstate Compact on the Placement of Children Unit, P.O. Box 1437, Slot S567, Little Rock, Arkansas 72203-1437.

Financial arrangements should be discussed with the prospective placement resource before the study is requested. If a board payment is needed, a foster home study must be requested

The Arkansas ICPC Office will:

- Review the packet to determine whether or not it is complete and ready to forward to the receiving state's ICPC office.
- Coordinate with the sending party if changes in the packet are needed.
- Send packet to receiving state's compact office.
- Notify sending party of disposition.
- Coordinate the travel plans with the Family Service Worker if placement is approved (placement must be made within six (6) months of placement approval)

The Family Service Worker/Area ICPC Liaison will:

- Complete and route the "Interstate Compact Report on Placement Status of Child" (ICPC-100B) to the ICPC office if the out-of-state placement is approved and made. Show the date of the placement or of the withdrawal

of the request.

- Close the Arkansas Medicaid so that Medicaid services can be pursued in the receiving state.
- Code the "Application for Emergency Services" (CFS-6013) to show ICPC service using the child's name.
- Key the case type in CHRIS as "ICPC" for the child placed by the Division in another state.
- Notify the Adoption Services Unit of a proposed adoptive placement, if appropriate.

Communication between states regarding approval of placements, progress reports, case closures and disruptions must go through the ICPC office.

PROCEDURE VI-G6

Children Entering Arkansas for Placement

Services to children should not begin without placement approval (ICPC-100A) from the receiving state's ICPC office AND receipt of placement notification (ICPC-100B) from the sending state's ICPC office. Requests from sending state should include the same information as described in the Interstate Placement Packet and outlined in Procedure VI-G5. Contact the Arkansas ICPC Administrator if additional information is needed from the sending state to initiate services.

The disposition of requests is as follows:

- Requests for home studies of foster parent, relative homes, or adoptive homes received in the Arkansas ICPC office will be forwarded to the appropriate County Office for a reply.
- The Arkansas ICPC Unit will forward the foster home study to the ICPC Field Liaison, Area Manager or DCFS Supervisor.

The Arkansas ICPC Unit will forward the adoptive home study to the Adoption Field Service Manager, who will forward it to the Adoption Specialist.

PROCEDURE VI-G7

Completion of a Home Study

The Family Service Worker/Area ICPC Liaison will:

- Complete a Central Registry Check and a thorough home study, including the results of the criminal record check; if available, with signed recommendation regarding placement within ninety (90) calendar days of a request. The DCFS Supervisor must also make a recommendation for or against placement. If the criminal record checks have not been received, a copy of the application/request must be included in the packet and the results sent when received.

Any state agency that administers or supervises the administration of a state program operated under such an approved state plan will not be restricted from contracting with a private agency to conduct home studies.

The Adoption Field Services Manager must sign and date the recommendation in an adoption home study.

- Notify the ICPC office if there is to be a delay.
- Include "Request for CPS Central Registry" (CFS-316) and "State Police Criminal Record Check" (CFS-342). The results of the criminal records check shall be provided to the court as soon as they are received.

No foster child in the custody of another state agency who is placed in Arkansas shall be placed in any home if the criminal record check reveals a felony conviction of an adult in the home for:

- (1) Child abuse or neglect;
- (2) Spousal abuse;
- (3) A crime against children, including child pornography; or
- (4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

If the criminal record check reveals a felony conviction of any adult in the home for physical assault, battery, or a drug-related offense and the offense was committed within the past five (5) years, the child shall not be placed in the home.

- Send the home study to the Arkansas Administrator, Interstate Compact Unit, not directly to the other state.

PROCEDURE VI-G8

Routing of a Home Study

ICPC approved home study packets are valid for six (6) months from the date the ICPC Office signed the ICPC-100A. The child must be placed within that 6-month period.

The Arkansas ICPC Unit (Receiving State) will:

1. Review the home study to determine whether or not it is complete.
2. If the home study is complete, forward to the sending state's ICPC office.

If Arkansas receives an approved home study from another state, the ICPC Unit will forward the approved home study and the ICPC-100B to the ICPC liaison

The ICPC liaison will forward the approved home study and the ICPC 100-A to the assigned caseworker

The assigned caseworker will, with the court's concurrence, make a determination as to whether or not placement will be made. When the determination has been made, an ICPC 100-B will be prepared and forwarded to the ICPC liaison. The liaison will send it to the ICPC Unit who will forward to the appropriate state.

If the home study is denied, the ICPC Unit will process the denied home study request by forwarding a copy of the following to the appropriate ICPC liaison:

- a. The denied home study
- b. The ICPC 100A which indicates, in Section IV, "placement shall not be made"

The ICPC liaison will forward the documents to the appropriate FSW.

The FSW will:

1. File the denied home study and ICPC 100A in the appropriate case file and close the case OR,
2. Appeal the receiving state's denial of the home study by:
 - a. Preparing a formal request with available supporting documentation to justify why the home study denial should be appealed
 - b. Forwarding to the immediate supervisor for approval
 - c. If approved, forwarding to the Area Manager for approval
 - d. If approved, forwarding to the ICPC unit

The Arkansas ICPC unit will:

1. Forward a copy of the appeal to the appropriate state's ICPC office for reconsideration of the denied home study.
2. If the appeal is denied, the FSW must wait a minimum of six (6) months before re-initiation of the home study.

PROCEDURE VI-G9

Follow-up, Routing, and Monitoring

The Family Service Worker in Arkansas will:

- Provide monthly supervision of the child and send quarterly progress reports to the Arkansas ICPC Unit or as often as requested on the ICPC-100A.
- Notify the Arkansas Administrator ICPC office, immediately, if problems or changes with placement occur.
- Key the case type in CHRIS as "ICPC" for the child placed in Arkansas from another state.

PROCEDURE VI-G10

Travel Procedures for Children Receiving Out-of-Home Placement Services

When an Arkansas foster child has been approved to move into or out of Arkansas for a foster care or adoptive placement, or for reunification with parents the Family Service Worker/Area ICPC Liaison will:

- Submit request for travel to ICPC office with "Application for Out-of-State Travel" (DHS-1010) no less than two (2) weeks in advance. (The ICPC office will be responsible for obtaining approvals for the travel.)
- Make necessary travel arrangements through a travel agency approved by DHS.
- Submit ICPC-100B to the ICPC office for forwarding to the receiving state after the child is placed in the receiving state.

When an escort (state employee or non-state employee) is needed to assist with transporting an Arkansas foster child to or from an out-of-state placement, the Family Service Worker/Area ICPC Liaison will:

- Submit the same information as stated above for foster children travel.
- No travel shall commence until the DHS-1010s are signed.

PROCEDURE VI-G11

Other Travel Non-ICPC and Non-DCFS Children

For Non-ICPC travel, the Family Service Worker will:

- Request prior approval, using the DHS-1010 for a child and for an escort, as appropriate. (e.g., to attend a funeral, go on vacation with a foster parent or go on a visit of less than thirty (30) days.)
- Direct requests and questions to the Foster Care Unit.

Exception: For children placed out-of-state by an Arkansas court, the sending party is responsible for arranging transportation (DHS does not have legal custody).

- Forward the DHS-1010 to the Assistant Director of Community Services and the DCFS Director for signature.
- Attach the child's court order giving authority to travel and written documentation from the attorney ad litem.

An out-of-state visit is 30 days or less and is not subject to ICPC. However, if it is greater than 30 days, it is a placement, which is subject to ICPC.

PROCEDURE VI-G12

Progress Reports

The receiving state must:

- Send quarterly progress reports every three months unless otherwise stated on the ICPC-100A.
- Mail progress reports to ICPC office for forwarding to the sending state.
- Enter the progress reports in the child's case record in CHRIS.

PROCEDURE VI-G13

Termination of ICPC Cases

An Interstate Compact Placement can only be terminated with the concurrence of the receiving state ICPC Office. Reasons for terminating an ICPC placement include the following reasons:

- Adoption is finalized.
- Child reaches age of majority.
- Child is emancipated.
- Child is returned to the sending state.

- Custody is returned to the parent or placed with a relative with the approval of both the sending and receiving states.
- Transfer of jurisdiction.
- Concurrence of the receiving state.

The Family Service Worker will:

- Complete ICPC-100B indicating termination reason and route it to the ICPC office for forwarding to the receiving state.

The Arkansas ICPC Unit will:

- Send the ICPC-100B to the sending or receiving state's ICPC office to notify them of the closure of the ICPC case.

The sending state is responsible for the original submission of both the ICPC-100A and 100B.

PROCEDURE VI-G14

Exceptions to Policy

Items and services not specified in this policy must have prior approval of the Interstate Compact Deputy Administrator.

The Family Service Worker/Area ICPC Liaison, with the approval of the Area Manager, will:

- Write a memo to the Interstate Compact Administrator to fully explain the situation.
- Request that exceptions to policy be made.

The Arkansas ICPC Administrator will:

- Review the request.
- Inform the Family Service Worker/Area ICPC Liaison of the decision.

PROCEDURE VI-G15

Request for a Priority Placement Regulation No. 7 in the Guide to the Interstate Compact on the Placement of Children

A priority placement is when a court, upon request or on its own motion, or where court approval is required, determines that a proposed priority placement of a child from one state into another state is necessary because:

- The child is under two years of age;
- The child is in an emergency shelter; or
- The court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

Regulation No. 7 does not define "substantial amount of time", consequently leaving its interpretation to the receiving state ICPC.

The receiving state agency has thirty (30) days to complete a request for a priority placement. Requests for placement shall not be expedited or given priority except as outlined below.

A request for a priority placement will be implemented as follows:

- The court shall send its order to DCFS within two (2) business days.
- The order shall include:
 - The child's name, address and phone number;
 - The Fax number of the judge and the court, if available.
 - The sending party will send the following to the state Central Office ICPC via overnight mail, or fax, within three (3) business days:
 - The signed court order. (The court order must specify how the case qualifies as Regulation No. 7.);
 - A completed form 100A (ICPC Placement Request);
 - Supporting documentation according to policy.
- Within two (2) business days after the receipt of the ICPC priority placement request, the sending state ICPC office will overnight mail the priority request and its supporting documentation to the receiving state ICPC

- office with a notice that the request for placement is entitled to priority processing.
- The receiving state ICPC Office shall send all the documents to the receiving state's local office within two (2) days. The receiving state's local office has twenty (20) working days to send a determination back to the receiving state's ICPC Office.
 - The receiving ICPC office has two (2) days to overnight mail the determination to the sending state's ICPC office. The sending state ICPC office has two (2) days, through overnight mail, to send the determination to the local office.
 - The foregoing shall not apply if:
 - Within two (2) business days of receipt of the ICPC priority placement request, the sending state Compact Administrator determines that the ICPC request documentation is substantially insufficient, specifies that additional information is needed, and request the additional documentation from the FSW by FAX or telephone if FAX is not available, or
 - Within two (2) business days of receipt of the ICPC priority placement request, the receiving state Compact Administrator notifies the sending state Compact Administrator that further information is necessary. Such notice shall specifically detail the information needed.

For such a case in which either of the two prior dot points apply, the twenty (20) business day period for the receiving state Compact Administrator to complete action shall be calculated from the date of the receipt by the receiving state Compact Administrator of the additional information requested.

PROCEDURE VI-G16

Juvenile, Mental Health, and Adoption and Medical Assistance Compacts

In addition to the ICPC, three other Interstate Compacts were enacted to coordinate the interstate placements of children and juveniles as follows:

- **Interstate Compact on Juveniles:** This compact is designed to serve those children needing an out-of-state placement who have been adjudicated delinquent and who have been placed on probation or parole. This compact also provides for the return of non-delinquent runaways, escapees, and absconders. The Interstate Compact on Juveniles is administered by the Division of Youth Services.
- **Interstate Compact on Mental Health:** This compact is designed to facilitate the transfer of resident patients (both children and adults) from a state-operated mental health facility in one state to a similar state-operated facility in another state. The Mental Health Compact is administered by the Division of Mental Health.
- **Interstate Compact on Adoption and Medical Assistance:** This compact is for adoption assistance for IV-E eligible children who are under an adoption subsidy agreement. The adoption worker should notify the Adoption Subsidy Coordinator as soon as it is known that an adoptive family/child is moving out of state or has moved. The Adoption Subsidy Coordinator will send information to the new state of residence and also to the adoptive parents advising them to contact the local Medicaid office in their new state of residence. This contact will be for the purpose of getting medical benefits for their child in the new state of residence.